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THE PRISON AND THE PRISONER



Adolph Lewison

THE PRISON AND THE PRISONER

A SYMPOSIUM BY

GEORGE GORDON BATTLE
R. J. CALDWELL
JOHN COLLIER
CHARLES HENRY DAVIS
ARTHUR D. DEAN
FREDERICK A. DORNER
BERNARD H. GLUECK

E. KENT HUBBARD
KARL W. KIRCHWEY
COLLIS LOVELY
THOMAS MOTT OSBORNE
THOMAS W. SALMON
WILLIAM H. WADHAMS
E. STAGG WHITIN

EDITED BY

JULIA K. JAFFRAY

SECRETARY

THE NATIONAL COMMITTEE ON PRISONS AND PRISON LABOR



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TO ONE WHO SAW THE REALLY GREAT
SIGNIFICANCE IN THE PENAL PROBLEMS
OF TO-DAY, GRASPED THE FORCES SHAPING
FOR THIS STRUGGLE, AND ORGANIZED THESE
FORCES TO BE COMPREHENSIVE AND POTENTIAL
IN THE MAKING OF A NEW PENAL SYSTEM
DEVELOPING OUT OF THE CONDITIONS POR-
TRAYED BY THIS BOOK—TO OUR
PRESIDENT, ADOLPH LEWISOHN.

436067

INTRODUCTION

THE last twenty-five years have marked many movements for the amelioration of conditions under which people live and labor. Housing, Child Labor, Industrial Conditions, Tuberculosis, Insanity, all have come under our purview. In each case the movement has become definite and effective when academic moralizing has given place to personal visitation, when suggestion and direction have been had from those who have looked for themselves and speak with the authority of experience.

Penology, criminology, etc., have been the speculation of the wise in their own conceit. The prisoner has remained an abstraction to be babbled about, though never really known — a thing apart, disowned, investigated at arm's length for fear that the contagion might possess the investigator.

The humanness and fallibility of convicted and unconvicted alike have raised a barrier between the prisoner and those who attempted to study him. His criminal characteristics, his love of evil, and the outlawry of his practices have all been discussed in the third person, but it has been dangerous to admit that he is simply a man like ourselves, the difference being that a chance turn of the wheel of justice has singled out one of his acts and condemned it with the power of the law.

But the new day has dawned for the prisoner. At last we look for ourselves!

Having brought the study of the prisoner to the basis of scientific reality, having divorced from our discussion the thought of our own superiority and having sought the interpretation of the problem from the only one who can really interpret it — the prisoner himself — we can feel that our effort will reach to the heart of a great problem, that our rising knowledge will help to lift the whole superstructure of society.

What have we learned? That our former methods of dealing with the prisoner have sent him from the prison less able than at entrance to conform to the standards of society; that we must call upon the physician, the psychiatrist, to help discover what manner of man the prisoner is; that we must fit him for outside life through industrial training, through educational methods, through responsibility assumed in governing himself; and that we must stand beside him on release and aid him in making those social contacts through which he can re-establish himself.

After seven years of scientific study and personal investigation, the National Committee on Prisons and Prison Labor is in position to point to the solution of these several problems, to call upon those associated in its work for authoritative recommendation — based on personal experience.

What is the pressing need to-day? Men and women to carry on the work; men and women with the broad conception of the problem, trained to meet

the issues it presents. Such workers the Committee is prepared to train. Through the coöperation of the President and Trustees of Columbia University, courses have been established in practical penal problems, and another year, it is hoped, will see these courses available through correspondence to students throughout the United States.

The perusal of the articles contained in the following pages will convince the reader that there has been secured a broad, scientific background of fact upon which can be based in the years to come the training of prison workers, the constructive reform of our institutions, and the accurate case study of individuals in these institutions — development which can only follow the routing of the forces of exploitation and the establishment of the new relationship with the man in prison.

E. S. W.

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Judge, Court of General Sessions, New York City

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Director, Psychiatric Clinic, Sing Sing Prison

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Of the New York Bar

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CHAPTER I

THE PRISONER AND THE COURTS

BY WILLIAM H. WADHAMS
Judge, Court of General Sessions, New York City

CHAPTER I

THE PRISONER AND THE COURTS

BEFORE considering how to do a thing it is important to know what the thing is that you want to do. The first inquiry, therefore, before discussing method is to consider purpose. It is generally admitted by thoughtful minds that the purpose of the administration of the criminal law is not the avenging of society on the wrongdoer; not the infliction of punishment for the sake of getting even. It must be generally conceded that the purpose of the administration of the criminal law is to protect society against the commission of crime. In order that the community may enjoy life, liberty, and the pursuit of happiness, ever since organized communities have existed, certain rules of conduct have been prescribed, the violation of which has been termed crime. Different rules have prevailed at different periods in the world's history. The rules are also found to be different in the same period in different countries, and even in the same country in different localities. In the United States there is a marked difference in the several States in the definitions of the degrees of larceny and homicide. As these rules are made, they differ according to the character

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and understanding of the makers and represent the views of the lawmaking powers. Crime is the doing of that which is prohibited by the lawmaking power of a particular community.

This discussion does not undertake to determine whether all the laws are wise or unwise. From the time when Moses, the great lawgiver, returned from Mt. Sinai with the ten commandments, rules of conduct have been formulated by ecclesiastic and temporal power. It may be said, as in the making of books so in the making of laws, there is no end. Each succeeding year the duly constituted lawmakers return from their several Sinais with new books of the law. This must necessarily be so, as these rules of conduct represent the consensus of opinion, at least the opinion that has power to make the law for the time, as to what is desirable and necessary for the protection of society. The determination of what shall constitute crime is in the hands of the lawmakers. The legislatures not only formulate the definitions of crime but also make the laws with respect to the procedure, the penalties, the administration and government of penal institutions. The law may, therefore, be divided on this topic into two heads, the definition of what crime is and the regulations with respect to the administration of the criminal law.

✓ The function of the courts is to determine whether crime, as defined, has been committed and having so determined to pronounce sentence in accordance with the law. The endless procession of the unfortunate and the vicious who are charged with the

commission of crimes passes before the judge. Men, women, and children are brought before the court by the police. It may be said with truth that in the last analysis they are not brought in by the police, although the police are the instruments of arrest, but that often they are the victims of social conditions which arrest their lives and bring them into court. (If there is to be any permanent prevention of crime, it must be stopped at the source by changing the conditions which lead to crime.) The submerging power of poverty, failure in the care and culture of children, careless neglect of the unadjusted and defective are undoubtedly some of the underlying causes of crime and lead to what is generally termed bad environment, such as congestion, bad housing, unemployment, and the abuse of drink, which are so often found to be the immediate inciting causes of crime. These questions present the great struggle of the human race, and it must be conceded that they are the more important questions. But we have to turn our attention to the immediate need of things, and conditions being as they are and crime being committed, what shall be done with the offender that society may best be protected?

(The emphasis has heretofore been laid upon the capture and conviction of the offender.) It was not long ago that the criminal was permanently put out of the way, even for minor offenses, by hanging. As late as 1794, men were hanged in the State of New York for larceny. When juries would no longer convict in such cases, the pressure of public opinion

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changed the punishment to imprisonment, and apparently the only thought was that the offender should be safely locked up. When it has been established that the offender has violated the rules which society has made for its protection, and it appears likely that he will violate them again, the offender must be set apart for a time. Under this system, when the time of his detention terminates, he is released. (The great contribution of Thomas Mott Osborne is the emphasis which he has placed upon the fact that under the prison sentence method the offender *comes back*. At the end of his sentence he is returned to society. Under the old prison method frequently he returned crushed in body and in mind by reason of his neglect and confinement, less equipped to take his place in the community than when he went in, and often filled with a spirit of hatred and revenge, a worse man than when he went in. The result was that he failed to take his place in society, returned to commit crime again, and if caught was sent to prison for another term.) An investigation has shown that over sixty per cent of the men in Sing Sing Prison, New York, had been in jail before, many of them many times before. In a recent tour of prisons of twelve States I found no case in which less than fifty per cent of the inmates of the prisons were old offenders; in some cases the estimates given by the keepers and wardens were as high as ninety per cent. In one convict camp the entire "gang" had been in prison before. The jails, reformatories, penitentiaries, and prisons have been turning out a veritable army of ex-con-

victs.¹ When the percentage of those who are caught and returned to the prisons because they have again committed crimes is considered, it is obvious that the State is deeply concerned to bring about an administration of prisons which will lessen the number of habitual offenders. As a matter of self-protection it is only common sense to take measures to protect the community against the coming back of these men. While in jail these offenders are the wards of the State. The State has a responsibility, which it cannot avoid, to take that care which will best insure against the recommission of crime by these wards when they are released.

In reviewing the cases which have passed before me in the Court of General Sessions in the City of New York, I have been impressed with the large number of men — approximately one in three — who have criminal records.² Many of them began in juvenile institutions from which they were apparently graduated to reformatories, penitentiaries,

¹ The number discharged or paroled in 1910 from New York penal institutions, as shown by the last United States Census, was from State prisons and penitentiaries 1,421, from State reformatories 1,894, from County jails and workhouses 37,353, from Municipal jails and workhouses 2,886, from institutions for juvenile delinquents 2,337, making the total number discharged from New York State jails in one year 45,885. The total number discharged in 1910 from all jails in the United States was 468,277.

² In 1914, the total number of convictions in the Court of General Sessions of the City and County of New York was 3,724, of whom 1,227 had been in jail before. In 1915, the total number of convictions was 3,728, of which number 1,348 were old offenders, and in 1916, the total number of convictions was 2,834, of whom 1,113 had been previously convicted.

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and State prisons. <Many of them were obviously feeble-minded or mentally deficient.> The Great Britain Royal Commission on the Care of the Feeble-minded, which made the most elaborate study of the problem ever undertaken, in discussing the relationship of mental deficiency to crime, gives 10.28 per cent as an extremely conservative estimate of the proportion of feeble-minded in the prison population.¹ Doctor Henry H. Goddard, writing on the situation in this country, states: "Although we cannot determine at present just what the proportion is, probably from 25 % to 50 % of the people in our prisons are mentally defective and incapable of managing their affairs with ordinary prudence."² Of course, feeble-mindedness may be variously defined, but the lower grades which are unable to care for themselves or to adjust themselves to their surrounding social conditions may be readily ascertained.

Among the prisoners there are also a large number who are not prepared, by reason of lack of training, mental and physical, to properly provide a living for themselves or those dependent upon them, and there are also many who by reason of environment have been warped but who are capable of correction.

All those who are convicted must be sentenced by the court. Under the laws of New York State

¹ As cited in the Report of the New York State Commission to Investigate Provision for the Mentally Deficient, 1915, p. 50.

² Henry H. Goddard, "Feeble-mindedness — its Causes and Consequences," p. 7.

and in many other States there is a choice of institutions and of the length of sentence which may be imposed. In some States there is neither choice of institutions nor of the length of sentence, the sentence being prescribed by law "to fit" the crime, regardless of the particular facts of the case. The inadequacy of such method to properly protect society against the commission of crime is obvious. With growing experience new lessons should be learned, but through the experience of the last few years, while attention has been drawn to the fact that the men "come back", that they come out of prison to take places in society, a point has been reached where certain conclusions may be drawn from the experiments already made.

There are three essentials in the new prison methods: classification, preparation to come out, and the indeterminate sentence.

CLASSIFICATION. The records show that certain types, which are not classified in law as legally insane, are a menace, often even more dangerous than the insane. A feeble-minded person with a criminal tendency, when left uncared for, will recommit crime, no matter how many times he has been in jail. One case in my experience may be sufficient to illustrate the point. In 1907, a boy was committed to Randall's Island, it being known at the time that he was mentally deficient. At the end of his term he was released and committed another crime, after which he was again released; he committed a third crime and was sent to the penitentiary. Later, he was brought before me, having committed

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forcible abduction upon a schoolgirl. No institution had been provided by the State of New York for the especial care of the feeble-minded delinquent. Under the auspices of the National Committee on Prisons and Prison Labor, and with the aid of a generous gift, a psychiatric clinic has been established at Sing Sing Prison for the purpose of examination and classification of the inmates, and it is a part of the plan of the new Prison Commission of New York State to provide for the suitable care and custody of defective delinquents. Recently, the legislature of the State of New York appointed a commission to make investigation and proper provision in the State for such cases.¹

Mentally deficient persons with criminal tendencies should be under proper restraint until such time as it appears that they are in proper condition to be released. It is obvious that a mentally deficient person should be removed from society not only for his own protection but also for the protection of the community, and for like reason he should be set apart from other offenders because he cannot adjust himself to prison life with normal prisoners; he interferes with the industries and the discipline of the prison, and before his status is understood he is often abused and disciplined for faults which he cannot help. Classification should also segregate those who are suffering from infectious venereal diseases and should provide for the separate care of those who have tuberculosis. It is extraordinary

¹ § 2, sub-sec. 9, c. 238, N. Y. Laws, 1917, known as Hospital Development Commission.

that in many States the first step in classification, the separation of children from adults by provision for children's courts and juvenile institutional care, has not been taken.

PREPARATION TO COME OUT. — If a man is to take his place in society when released from prison, he should be healthy in body. Therefore, his housing and conditions of living should be such as do not destroy his health.¹ He should have sufficient air, light, exercise, and recreation to build him up. He should also be equipped to take part in some useful wage-earning occupation. It is for this reason that vocational and trade schools have been introduced and the reorganization of prison industries undertaken with a view not only to produce revenue for the State but also to afford educational facilities for the inmates by the most progressive prison management.

The building up of the body and the training of the mind and the hand are not, however, in themselves sufficient to protect society against the commission of crime by the inmate when he comes out. They help, because they give him a better opportunity to face the world and to take part in useful occupation, but bodily health and mental equipment may, if diverted to wrong use, only make a more dangerous criminal of the offender. Something more is needed. Something which will give a new motive to the life, which will create a new attitude

¹ The author drafted the clause which provides "for the demolition of the present cell house and cell block at Sing Sing." (N. Y. Laws, 1916, c. 594.)

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of mind, a new purpose and determination to make good. The most approved buildings, educational classes, industrial schools, even outdoor work, will not necessarily produce the desired result. All these improvements and changes are obviously appropriate and will be adopted by a State which undertakes to deal in an intelligent way with the prison problem, but the greatest of all experiments which has been made in prison management, the Mutual Welfare League,¹ has demonstrated, even under adverse conditions, adverse conditions of housing, of old and inadequate machinery for the industries, and under limitations of ancient legal restrictions, that genuine correction, the birth of a new hope, resolution to lead correct and honest lives and the actual living of them after release, may be accomplished by the simple means of self-government in the prisons. By this method the men are taught a sense of responsibility to the small community within the prison, from which they learn a sense of responsibility to the larger community without the prison. It would be difficult to convince any one by assertion that the principle of democracy so applied would produce the remarkable results which it has achieved among the men who had been convicted of crime, but the facts establish the case. The results were immediately noticeable in the prison itself. It was observable in the bearing and the appearance of the

¹ Inaugurated at Auburn Prison, New York, February 1913; and at Sing Sing Prison, New York, December, 1914, by Thomas Mott Osborne.

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men; it was reflected by their conduct while in prison.¹

But the best proof is the record of the men after coming out of prison. The final test of the efficiency of any institution from the point of view of accomplishing the desired purpose of the administration of the criminal law, namely the protection of society against the recommission of crime, is the record of the convicts after their release. (From January 1, 1915, to July 1, 1917, hundreds of men have appeared before me who have been released from penal institutions and who have returned to the commission of crime, but during that entire period only three have been brought before me who were released from Sing Sing Prison since the Mutual Welfare League was established. Thinking that perhaps my experience was, through some accident of chance, exceptional, I made inquiry and have a letter from the Superintendent of Prisons of New York, Mr. Carter, stating that during the year 1916, among the hundreds who had been released from Sing Sing, only fifteen had been returned for the recommission of crime. ✓

The old prison method was a demonstrated failure, if it be viewed from the standpoint of the record of its inmates when released from prison, but it was a record which was to be expected from the unintelligent treatment of those in the care of the State.

¹ In 1912-1913, with a prison population of 1,442, the surgeons dressed 387 wounds; in 1913-1914, with a prison population of 1,466, they dressed 367 wounds, and in 1914-1915, under Mr. Osborne, with a prison population of 1,616, they dressed 156 wounds, or a decrease of 64 per cent.

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Now that we know better, our responsibility is greater. We should put into effect as rapidly as possible those methods which have produced the best results.

SENTENCE. Having in mind that the convict is to come out, the question of sentence necessarily requires consideration. When is he to come out? How long is he to be held? The obvious answer is that he should be released when he is ready and equipped, when it is safe for him to be released. Under the present method in some States the jury, merely hearing the facts of the crime, — everything else would be irrelevant and immaterial, and therefore excluded, — determines off-hand the sentence, that is, when the defendant shall be released. In many States, as in the State of New York, the sentence is fixed by the judge within the limitations of the law, which provides a maximum which he may not exceed, and in some instances a minimum which he must impose. How long should the patient be detained at the hospital? The answer is until he is cured. But who can tell how he will respond to treatment? Judges are called upon, with such information as they are able to gather at the moment — generally without any knowledge of the underlying currents of the man's life, of his medical history, or his physical condition, of his environment, of his moral qualities excepting as shown by the particular instance before the judge — to determine in advance just how long the defendant should be held. When that time expires he is released. All those who have to do with the

management of penal institutions know perfectly well that inmates are released, because of the expiration of their terms, who are a menace to society and a danger to the community. On the other hand, there are men languishing in jail who, if released, would be capable of leading useful lives.

Appreciating this situation, Doctor Katherine B. Davis, George W. Kirchwey, and I recommended the passage of a law which provided for what might be termed an experiment in a genuine indeterminate sentence. A bill was passed¹ and has been in operation since January 1, 1916. It is commonly known as the Parole Law. The effect of its provisions is that defendants committed by judges in New York City to the workhouse may be held for an indeterminate period of two years and those committed to the penitentiary may be held for an indeterminate period of three years, but may be released at any time before such maximum upon the recommendation of the Parole Board, and in the case of those committed to the penitentiary with the approval of the court. I suggested that the report of the Parole Board be submitted to the court for approval for the reason that by this method the recommendation of the Parole Board was subject to judicial review and was given the publicity of open court, with an opportunity for any one, including the district attorney, to be heard in opposition, thereby avoiding possible objection that the determination to release was reached by a board in executive session,

¹ Chapter 579, N. Y. Laws, 1915, amended by c. 287, N. Y. Laws, 1916.

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without publicly stating its reasons. This method has worked with admirable success. During the year 1916, 1,836 men were committed to the penitentiary; of these, 519 have been released on parole. Of those released, 54 have violated the conditions of their parole and were returned. Of the remaining 463 on parole about 96 per cent are apparently endeavoring to make good. During the same year, 74 women were committed to the penitentiary, sixteen of whom have been released on parole; of those released, only one has violated the conditions of her parole and been returned. There were committed to the workhouse 400 men and 334 women in 1916. Of this number, 114 men and 109 women have been paroled. Three men and eight women were subsequently returned for violation of their parole or have been arrested for other offenses.¹

By this method, instead of guessing in advance just how long a prisoner shall be held, the court determines in view of all the circumstances of the crime and also the character of the defendant, upon application and hearing, that the prisoner may now come forth from the prison on a trial of liberty. Information is obtained as to where the defendant is going, whether he has employment, whether he has relatives or friends to look after him. He is always released on parole, that is, a trial of liberty, and if he fails to make good may be returned. The system has worked so well in penitentiary sentences that it should be extended to State prison sentences.

In view of the fact that by long custom maximum

¹ Annual Report, 1916, N. Y. City Parole Commission.

sentences for different crimes have been established by law, the transition in New York State could be easily effected by allowing the maximums to remain as they are. Upon the conviction of the defendant, unless sentence was suspended, he would merely be committed by the court to State prison, the law fixing the maximum for the crime as the longest time during which he could be held, with the provision that upon the recommendation of the Parole Board, with the approval of the court, he could be sooner released.

The question as to the deterrent effect of punishment is frequently raised by sincere inquirers as to the best method to be pursued. It is interesting to note that there are several classes of persons who commit crime upon whom the thought of punishment has little effect. First, there are the calculating crooks who never expect to be caught. This is frequently illustrated by old crooks who can always point out the mistake which led to detection and how they could avoid detection another time. Then there are those who commit crime in the heat of passion without thought of the consequences. I am satisfied from my observation that the effect of punishment as a deterrent has been exaggerated. It was supposed that crime could be suppressed by cruel and what we would now consider inhuman treatment, but the desired result was not produced. The most effective result is produced by swift and sure conviction in case of guilt. The punishment consists in depriving the defendant of his liberty. There is greater deterrent effect in

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treating the defendant as a defective or inferior individual who may not safely be permitted to mingle with his fellows unless cured than in treating him as a desperado to be caged. This fact has been demonstrated by what I have called the experiment, now a proved success, in the indeterminate sentence to the penitentiary. < The experience of the judges in New York City has been that the indeterminate sentence has proved the most effective deterrent yet devised.

When I was in Pittsburg in January, 1917, I was informed by the warden of the County Jail that since the passage of the indeterminate sentence law in New York State large numbers of pickpockets who would have been subject to that sentence had come from New York City to ply their trade in Pittsburg, and the decrease in the number of those charged with larceny from the person in New York City has been noticeable. [The indeterminate sentence is an effective deterrent for the reasons : first, the defendant knows that he has no chance to obtain a light sentence, since the sentence is alike no matter who is the judge, and the defendant always has to run the risk of being held the maximum term, his earlier release depending upon genuine guarantees that he can make good and will make good when released ; and, second, when released, the defendant comes out on parole, and if he fails to make good must return and may be held for the remainder of his term. The indeterminate sentence, therefore, makes for uniformity of sentence and is also a great stimulus to the offender to correct his ways and make good.

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Through classification the incapable may be cared for; through preparation those who are capable may be fitted for honest and useful lives; through the indeterminate sentence release may be granted when the capable are ready to be returned to society. By these means society will be better protected against the commission of crime.)

CHAPTER II
THE PRISONER HIMSELF

PART I

BY BERNARD H. GLUECK, M.D.
Director, Psychiatric Clinic, Sing Sing Prison

PART II

BY THOMAS W. SALMON, M.D.
Medical Director, National Committee for Mental Hygiene

CHAPTER II

THE PRISONER HIMSELF

PART I

THE relation of the prisoner to the various agencies with which he comes in contact during his intramural career are ably discussed by the several contributors to this volume. There remains for consideration another important relationship, that is, the relationship of the prisoner to himself. [To one who subscribes to the theory of absolute psychic determinism, to the belief that nothing in life happens fortuitously, but is the result of antecedent factors, the discussion of the latter relationship at once assumes a leading place in a book dealing with the prisoner. The ultimate success of any remedial agencies that may be applied to this problem depends in the first place upon a proper acquaintance with causative factors. (The writer, of course, assumes that we are all in agreement concerning the function of a modern system of penology, namely: that it is primarily intended to be remedial, reconstructive, reformatory, and not purely punitive in its aims.)

Society has, at all times, endeavored to formulate conceptions regarding causative factors of crime, some of which, though born in the infancy of the race, are still adhered to tenaciously by a large portion of

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mankind. These notions concerning the causation of criminal behavior naturally suggested certain remedies which society has been assiduously applying in its effort to cure itself of this evil. (How effective, or more correctly how ineffective, these remedies have been is common knowledge. But contrary to the prevailing belief, one is tempted to venture the suggestion that the fault does not lie entirely with the remedy, but that it is the promiscuous, unintelligent, blind manner of its administration that has had a great deal to do with its inefficiency. What would one think, for instance, of a modern hospital where all the patients were to receive the same medicine, the only variation being in the amount administered or in the length of time that a given patient is subjected to the treatment.) And yet, we are doing just this very thing in promiscuously sending all offenders against society to prisons, where no attempt is made at individualization, either in the application of the punitive phase of prison administration or in its reformatory phase.) Those who have given attention to this problem are quite convinced that Healy's dictum that the problem of delinquency will ever remain a problem of the individual delinquent is a correct one. There are very few phenomena common to all offenders, even to all chronic offenders. There are very few factors which are wholly responsible for the criminality of all chronic offenders, or even for the criminality of a large majority of them. And yet, we persist in our endeavors to fit all these extremely varying units into a uniform system of penology or reformation.

We cannot hope to succeed in any effort towards reformation if we do not start out with the conviction that human beings vary within very wide limits in their susceptibility to correction or reformation; that some individuals, because of their psychological make-up, either qualitative or quantitative, are absolutely or permanently incorrigible and have to be dealt with in only one way, and that is permanent segregation and isolation from society. If there is a single phenomenon which is common to all careers of chronic, antisocial behavior, it is this: The chronic offender against society has, for one reason or another, never succeeded in adequately differentiating himself from the environment in which he is obliged to live, an absolute essential in the evolution from savagery to civilization. Thus, on the one hand, he has failed to develop a clear conception of property rights; while on the other hand, he lacks the appreciation of and respect for the benefits to the individual, of the laws and prescriptions which society has imposed upon its members for the regulation of their conduct. Now, there are many reasons why an individual may have failed to attain this differentiation, but whatever these reasons are, it cannot be denied that failure in this respect forms the greatest and most important debit, which it should be our aim to equalize by adequate credits during the individual's sojourn in a penal institution. Any attempt in this direction means intense specialization, and it is this recognition of the need for specialization that has prompted the establishment of the Reception Prison.

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✓ Starting out with the conception that an individual whom society has elected to ~~isolate from its midst~~ for a certain period of ~~time and confine within a certain specialized environment~~ labors under the burden of a deficiency, of a debit which has caused his isolation, it should be the function of the Reception Prison to first make possible an accurate delineation of that debit, and second to outline the type of credits that would tend to equalize it. Thus, the primary function of the Reception Prison is the intensive study of the individual so that a proper estimate of his personality may be gained, and to exert its influence through the various reconstructive methods which are at present at hand or may be introduced in the future with the view of bringing about a proper adaptation, or a proper coördination between the individual prisoner and these agencies.)

Doctor Salmon will discuss the administration of the Reception Prison and the methods of operation as devised by experts in the allied fields of medicine and psychiatry. ✓ I will only say in passing that to the psychiatrist it seems that too little attention has been paid in the past to those instinctive and unconscious forces which are operative in the control and direction of human conduct. More attention should likewise be paid to antenatal determinants, more especially to those traits of character which are dominant in the lives of the antecedents, both individual and racial. The life of the mother and the influences under which she was obliged to live during the period of gestation, the story of the birth, of in-

fancy and childhood, all of these deserve special attention. The succeeding period, which embraces perhaps the most important epoch in an individual's life, namely, the epoch of the emancipation of the individual from his parental bonds, should constitute a very interesting subject of study. Next, school and occupational career, and the evolution of the conscious sex life of the individual, are of great importance. A due amount of interest should be accorded to extrinsic insults to which the individual may have been subjected and which may have had an influence in determining his career of crime.) There can be no doubt that during the early stages of the evolution of a psychosis, there are many possibilities of going astray in the line of antisocial behavior — at any rate, this is being illustrated to a rather surprising extent in our work at Sing Sing. Then comes the period of decline, of loss of efficiency, of the endeavor to compensate for powers and abilities that one feels slipping away from under his control, which endeavors sometimes express themselves in antisocial behavior. The importance of the field investigation of a great part of the life history of the individual should not be overlooked. Detailed, comprehensive study of the individual, such as has been outlined above, cannot help but furnish us with a dependable estimate of the human being before us, and must naturally aid us very materially in outlining a course of procedure necessary for bringing about an adequate, socially acceptable balance.

What is to be done, after such estimate has been reached, cannot be outlined in detail. The variations

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are bound to be so extensive and the nature of the reconstructive agencies so protean as to make it impossible to start out with a well-formulated outline. One thing is true, that whatever agencies there may be at hand, these should be directed towards bringing about a proper adjustment between the individual and the environment. Certain activities in an industrial way, in a vocational way, in a purely educational way suggest themselves, but only as generalities. The ultimate application of these activities must, in the final analysis, be determined by the individual who is to benefit from them. Were it not for the fact that one cannot escape a great deal of blatant criticism at the hands of penologists of the older order of things, we would not stop here even to mention the fact that in this proposed scheme too much emphasis is being laid on the individual and too little on society's share in a penal system. But there is only one answer to this, and that is that society can ultimately only benefit by applying its efforts toward reconstructing the individual offender, that its benefits can only be proportionate to the benefits in the evolution of the personality which will accrue to the prisoner as a result of his sojourn in a penal institution. So much for the internal administration of the Receiving Station.

There is one other activity to which such an institution would admirably lend itself, and that is its association with an outside educational institution. One does not have to argue extensively that the place to study the criminal and the place to acquire knowledge concerning the subject of anti-

social behavior is the prison. No amount of abstract discussion of crime and punishment, of original sin or more concrete causes of antisocial behavior will ever bring us any nearer to the solution of the problem before us. Crime cannot exist apart from the criminal, and it is the criminal as a human being, acting, feeling, and willing, who must teach us the nature, the causes, and the cure of criminal behavior. A Reception Prison, such as is planned for the prison system of the State of New York, could articulate in many ways with an educational institution. First, it could offer to such an institution an admirable course in clinical criminology. Second, it could offer a very fertile field for research on the basis of fellowships to be carried on in conjunction with work at the university. Third, it could avail itself of the affiliation with the university to bring into the prison such extension courses as may be of benefit in carrying out the reconstructive aims of the prison. Such, in brief, is a general survey of the work that it is planned to carry out at Sing Sing, and which it is hoped can be suggestive to institutions throughout the country.

PART II

The general principles which underlie the effort to determine the relationship of the prisoner to himself have been outlined by Doctor Glueck. It is therefore fitting to discuss some of the specific methods which are being put into operation at the experimental station established at Sing Sing Prison, which is to serve as the clearing house for the prisoners of

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New York State and to which will eventually be sent all such prisoners at the time of their commitment.

The plan of utilizing Sing Sing as a Reception Prison was first promulgated by the New York State Commission on Prison Reform in its preliminary report published in 1914. The Commission recommended that the Sing Sing site should be abandoned as a prison, and that to it all prisoners sentenced in New York State should be sent for medical examination, observation, and for study of their character and aptitude, before being disposed of in pursuance of the sentence of the court.

The proposition passed through a period of discussion to its recognition in the law of 1916 which provided for a new Sing Sing prison and the conversion of old Sing Sing into a scientific receiving station. Psychiatric and medical experts have already taken up their abode at Sing Sing. Even amid the dingy surroundings of old Sing Sing an excellent hospital and laboratory have been established, and the first reports of work accomplished can be expected shortly.

A preliminary plan for the psychiatric work in a Reception Prison such as that suggested for Sing Sing was made during the summer of 1915 by Doctor George H. Kirby and Doctor L. Pierce Clark of New York City. Their recommendations have formed the basis for the organization of the Psychiatric clinic now in operation. Doctor Kirby and Doctor Clark recommend the investigation of a year's admissions, and, in addition, a careful mental study of at least three other groups among the prison popula-

tion : (1) refractory and incorrigible cases : (2) prisoners convicted for or suspected of sexual perversions : (3) all prisoners who develop symptoms of mental or nervous disorder or exhibit suicidal impulses or seem to be mentally defective.

The psychiatric investigation of the groups mentioned, they suggested, should aim to include the following for each case :

(a) Family history and heredity.

(b) Early development and later life history of the individual in detail. As complete an analysis of the personality or mental make-up as is possible for the purpose of establishing correlations between the criminal situation and the various internal (psychogenic) and external (environmental) factors operative in each case.

(c) Mental status of the prisoner : attitude and conduct in prison and reaction to confinement : determination of intellectual level and mental capacity for appropriate tests for feeble-mindedness, educational acquirements, etc. : symptoms of mental disorder with careful investigation of unusual emotional reactions and peculiar trend of ideas : special study of the criminal situation (subjective analysis) with efforts to get at the deeper motives underlying various criminal tendencies.

(d) Physical examination : abnormalities of physical make-up (stigmata) : general bodily condition, signs of specific and other diseases : neurological examination sufficient to detect any disorder of nervous system. Wassermann blood test in each case, lumbar puncture when indicated or necessary for diagnosis.

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These recommendations have been embodied in the plan for the work already under way at Sing Sing, and the writer wishes to emphasize that no one phase of the work constitutes an independent unit but is a coördinate part of a comprehensive scheme.

Medical Examination

The plan for dealing with the medical phases of the problem has followed the principles which have led to success in solving the problems of our profession. Not many years ago we used to talk of "the sick" and it was believed that, in providing a hospital, the community had done its duty by those who belong to this class. That conception has long since disappeared, and we provide now for the diagnosis and treatment of many kinds of sick persons in many different kinds of hospitals. This practice we are now carrying over to the prisons, though its operation will to a certain extent be retarded by the lack of institutions where certain groups can receive adequate care.

General Features

RECEPTION OF PRISONERS. Each prisoner, in order that the study may be effectively conducted, ought to serve a so-called probationary period in the receiving station of at least three months, during which time enough information will have been gained concerning his personality and aptitudes to justify the recommendation of a line of procedure for the remainder of his imprisonment.

MEDICAL CLINIC. As soon as practicable after

the arrival of the prisoner he will be presented at the medical clinic. Here he will be subjected to a most critical physical and mental examination. In such an examination the immediately practical question of general physical condition and the presence of contagious or infectious diseases will first receive attention but, in the course of two or three days at the most, and possibly half a day at the least, a complete examination will be made which will include careful anthropological measurements, estimate of nutrition, detection of defects and anomalies in growth and the determinative integrity of all the different organs.

Affections requiring treatment and defects capable of remedy will receive special attention in this examination. Every clinical facility will be used in this preliminary examination, the laboratory test made in each case, including at least the Wassermann test, the tuberculin test, and complement fixation test for gonorrhea. The records of this examination will be very carefully made and preserved.

HOSPITAL AND DISPENSARY TREATMENT. This examination having been carefully performed, certain immediate issues will have to be dealt with. All prisoners physically ill with acute or chronic diseases will be sent to the general hospital for treatment, except in the case of minor conditions which can be as effectively treated in the surgical and medical dispensaries. The condition of the teeth of each individual will be carefully noted and treatment in the dental dispensary commenced in each case in which defects are shown to exist.

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In mental conditions, if the diagnosis can be made by examinations conducted in the clinic building, admission to the psychopathic pavilion will not be necessary. In all cases, however, in which observation is desirable in order to determine the condition, or in which treatment is required pending transfer to an appropriate institution, the prisoner will be cared for in this pavilion.

All cases of venereal disease will be treated in the venereal pavilion. This applies to gonorrhea as well as to syphilis, the object of treatment being not only the earliest possible complete cure of the prisoner but elimination of the possibility of infecting others.

When, after active treatment, cases of syphilis give negative Wassermann reactions, transfer may be made to one of the different groups of prisoners at Sing Sing and from these groups to the other State prisons for which Sing Sing is intended to constitute the distributing center.

Prisoners who have tuberculosis will be immediately admitted to the general hospital and kept there continuously until their transfer to the hospital for tubercular prisoners at Dannemora is effected. It is suggested that pavilions for such cases can be constructed on the roof of the hospital building.

All prisoners with incurable diseases or those requiring continued treatment will be kept at the general hospital. Those in whom partial infirmity not requiring continued hospital treatment exists will be transferred to the "special group" which will be mentioned later.

The medical work outlined thus far will make it possible to pass on to the "normal group" or to the "special group" in Sing Sing only prisoners whose mental and physical condition has been exactly determined and who have been treated continuously for whatever disease they may possess. The insane, the tubercular, those with severe grades of mental defect and those with chronic or incurable diseases will not leave the hospital department except through transfer to more suitable institutions, the expiration of their sentence, parole, or pardon.

Normal Group

The normal group, doubtless, will be made up of prisoners found to be free from physical or mental defect or conditions requiring treatment. It is understood that the period of residence of such prisoners will be short, all of them being transferred to other prisons after a period of preliminary training.

Special Group

The establishment of a "special group" of prisoners is believed to constitute the most important constructive feature of the plan proposed. The principal constituents of this group may be briefly mentioned, and then a few suggestions made as to their management and disposition.

FEEBLE-MINDED. There exists no institution in the State at the present time for feeble-minded prisoners other than those whose mental grade is so low that they are likely to be detected before conviction and committed to the Matteawan State

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Hospital. Until a suitable institution for this type of cases can be provided, Matteawan State Hospital will probably continue to be used, although an unsuitable place for their detention. The higher grade classes can be cared for in the "special group" which it is proposed to establish until more suitable provisions are made in institutions for defective delinquents. In this group they can receive industrial training devised to fit their individual needs, such carefully supervised education as will be of the most practical benefit and special management with reference to conduct and responsibility. Such groups have been successfully established in reformatories. In other words, the management of mentally defective prisoners in the "special groups" will approximate that existing in an institution for high-grade cases of feeble-mindedness.

SPECIAL MENTAL CASES. All individuals in whom insanity (mental diseases or psychoses) exists will be transferred as soon as practicable to the Matteawan State Hospital. Without mental examination and under a system which brought mental cases to the attention of the physician only when they at first came to the notice of lay employees, about one in forty-five of the average daily population of Sing Sing Prison has been committed to the Matteawan State Hospital each year during the last three years. The ratio of commitments to the adult male population of the entire State is only one in 320. It is apparent, therefore, that we will have to deal with a very heavy incidence of mental disease among those received at Sing Sing. It is impossible to predict

the number of such cases which will be found after a careful psychiatric examination is made of all prisoners, but the experience of those few prisons in which such examinations have been conducted makes it certain that it will be several times greater than the proportion given. It is an obvious duty of the State to provide increased accommodations for such patients in the hospitals for the criminal insane.

The mental cases to be provided for in the "special group" will not, therefore, be those of frank mental disease. There is, in addition, however, a considerable proportion of prisoners in whom various psychopathic types of personality exist. It is felt that prolonged observation of these prisoners and special methods of management and care will not only benefit many of them individually but will remove from the prison population a small but important group in whom reformatory measures applicable to the general prison population are likely to fail.

SEXUAL PSYCHOPATHICS. In this group of prisoners are included those with various types of sexual inversions or perversions. Not a few of these prisoners will be found capable of much improvement by treatment, although most of them are not proper subjects for treatment in an institution for the insane or one for the mentally defective. Their collection in the "special group" where special oversight is to be at all times possible will help solve one of the most difficult problems which confront prison administrators.

INFIRM AND CRIPPLED. A small proportion of the prisoners admitted to the Reception Prison will be found to be unimprovable by hospital treatment and

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incapable of any except slight physical labor. In the "special group" such cases can be provided with a very suitable environment, and their industrial training can be modified with special reference to their needs and abilities.

In addition to the members of the "special group" which have been indicated, any prisoner presenting a problem which, either for his advantage or for the advantage of the prison, requires highly individualized treatment should be added to this "special group." In this way those presenting striking anomalies of conduct, unusual personalities, etc., will receive the special attention which they require.

The Mental and Sociological Study

The mental and sociological study will follow the general lines suggested by Doctor Kirby and Doctor Clark. The accurate diagnosis will come, however, as the result of the man's participation, under observation, in the community life of the institution and will grow out of it, being modified by it, rather than being arbitrarily made by an external laboratory. Psychological, mechanical, and other tests will be used, the coöperation of the field worker will be enlisted, but the receiving station itself will constitute the laboratory.

It is no easy task to obtain a personal, industrial, and sociological history of an adult delinquent who may have served several sentences under different names and have become expert in avoiding the surrender of such information, even when confronted by expert prosecutors and third degree examiners.

The success or failure of the receiving station will be determined by the attitude of the prisoners. Even at Sing Sing where the Mutual Welfare System is developing in the prisoners a determination to help in every way, the old habit of suppression of facts still partially persists. Accurate information can only be called out when it is apparent that the information will not be used against the man in his future career, and where there will be a direct profit to him from revealing the facts.

Reliable information can only be gained through the establishment of the best kind of personal relationships between the prisoners and the investigators and through the gradual demonstration of the fact that the release of information will better a man's opportunity in the institution and secure adequate recognition before the Parole Board or Indeterminate Sentence Board.

Buildings Required

The buildings required to carry out the plan herein proposed include a medical clinic building, general hospital, psychopathic pavilion, venereal pavilion and isolation pavilion. The attached estimate gives the approximate cost of such buildings.

MEDICAL CLINIC BUILDING. This building should provide the following examining rooms: laboratory; physical examination, special; physical examination, eye, ear, nose, and throat; physical examination, general; office of chief physician; office of medical clerk; psychopathic examination room; record room and library; surgical dispensary; drug room; medical

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dispensary; dental dispensary; psychopathic laboratory; toilet rooms; and storage space in attics. The records of the medical department will be of great and increasing value, and so arrangements will be made for their storage in fireproof filing cabinets. The general offices of the physician and his associates will be located in this building, and it will be the center of the hygienic, sanitary, and medical activities of the prison. The library will form a place for staff conferences and for research, as well as for the safe keeping of records. The morgue will be in the basement of the medical clinic building directly connecting with the laboratory. It is believed that a plain but substantial building providing all the facilities needed can be constructed for the amount estimated.

GENERAL HOSPITAL. The general hospital will provide for fifty patients, one side being devoted to surgical and the other to medical cases. In the center portion between the two wings will be situated the operating, dressing, and sterilizing rooms, the X-ray and photographic room, and quarters for the resident physician and nurses. A two-story brick building of plain but substantial construction (following the excellent type adopted by the United States Army) could be constructed for the amount estimated.

PSYCHOPATHIC PAVILION. The Psychopathic Pavilion will provide for fifteen patients, ten of them in individual rooms and five in a small ward. A day room and a room provided with complete hydrotherapeutic apparatus will be included, together with the necessary service rooms.

Buildings Required by the Medical Department

(HYGIENE AND SANITATION, MEDICAL OBSERVATION, HOSPITAL AND DISPENSARY TREATMENT)

DESCRIPTION	CAPACITY	APPROXIMATE COST
GENERAL HOSPITAL	50	50,000
For Medical and Surgical cases and tuberculosis pending transfer to hospital for insane		
PSYCHOPATHIC PAVILION	15	10,000
For special mental observation and treatment pending transfer		
ISOLATION PAVILION	5	3,500
For contagious diseases other than tuberculosis and venereal		
VENEREAL PAVILION	30	15,000
For active cases of venereal disease		
CLINIC BUILDINGS		25,000
Offices and record rooms of medical department		
EXAMINATION ROOMS		
General physical		
Eye, ear, nose, and throat		
Psychopathic		
DISPENSARIES		
General medical		
Surgical		
Venereal		
Dental		
LABORATORIES		
EQUIPMENT		6,500
Totals	100	\$110,000

Kitchen service (except diet kitchen) for General Hospital and Psychopathic Pavilion to be from main service department of prison. Independent kitchen service for Venereal Pavilion and Isolation Pavilion.

VENEREAL PAVILION. The venereal pavilion, to accommodate thirty patients, will consist of two wards accommodating twelve patients each, six isola-

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tion rooms, and the necessary service rooms. A dressing room and small ward laboratory will also be provided. The kitchen and dining-room service of this building will be independent.

ISOLATION PAVILION. The isolation pavilion will consist of five separate rooms, each with a water section, so that cases of different contagious diseases can be isolated at the same time. This building will probably rarely be occupied, but it is an indispensable adjunct of an institution of this size, no matter what its purposes may be.

Personnel

Thus far the plan has dealt only with general procedure and physical facilities. All these might be provided, and the great problems which it is proposed to attack remain unsolved unless an adequate personnel is also supplied.

PHYSICIAN. Under this title, by which the chief medical officer of a prison is officially known, there will be appointed to the Reception Prison a man qualified by scientific training, experience, character, breadth of vision, and personal qualities to direct and coördinate all the activities which have been suggested. He will be in effect, if not in official terms, the chief sanitary officer of the prison and in all matters will report directly to the warden. All other persons, both officers and employees, in the medical department should report directly to him.

ASSISTANT PHYSICIANS. One assistant physician will be assigned constantly to the general hospital, one to the medical clinic building, and one as a gen-

eral assistant, devoting himself chiefly to the care of patients in the venereal pavilion. At least two of the assistant physicians will reside in the prison.

ALIENISTS. An alienist and his assistant will, under the chief medical officer, have charge of the psychopathic pavilion and the mental examinations at the medical clinic. They will also, in coöperation with other prison officials, supervise the care and training of the mentally defective and other mental cases in the "special group." The assistant alienist will reside in the prison.

DENTIST. There will be a nonresident dentist who will be required to devote his whole time to the work of the dental dispensary.

MEDICAL CLERK. The medical clerk will have had practical experience in the care of medical records in a large general hospital. He will have, under the chief medical officer, full responsibility for the medical records of the prison.

LABORATORY ASSISTANT. As it is hoped that it will not be necessary to make the extensive provision necessary for laboratory examinations at Sing Sing, the duties of the laboratory assistant will deal with the routine examination of blood, sputum, and urine, and the preparation of specimens to be submitted for examination elsewhere. It is believed that the State Health Department and one of the medical schools in New York City will coöperate by providing the extensive laboratory which will have to form a part of the examination and treatment at Sing Sing.

NURSES. There will be a supervisor of nurses. All the nurses employed in the psychopathic pavilion,

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and the head nurses in the general hospital and in the venereal pavilion will be paid employees of the State.

SOCIAL WORKERS. One or two field workers (non-medical) will be required to assist in getting family and personal histories of the cases.

STENOGRAPHERS. A stenographer will be employed for the chief medical officer and one for the psychopathic pavilion.

Transfer of Prisoners

TRANSFER WITHIN THE RECEPTION PRISON. It is very essential to bear in mind that the establishment of the "special group" which has been described does not involve a rigid or permanent division. There will be free transfer from the "special group" to the "normal group" when there is a fortunate outcome to efforts at specialized training; from the "normal" to the "special group" when the test of prison social life discloses abnormal conditions not previously ascertained, and to and from the hospital as exigencies require. At all times the hospital and medical clinic building will serve the medical needs of the prison population.

TRANSFER TO OTHER PRISONS. One of the chief objects of the plan herein proposed will be to supply to the other prisons a stream of healthy, sane, able-bodied prisoners who have received the benefits of preliminary training, have had physical defects corrected, and have already entered into the spirit of self-government upon which the success of their future lives, both in and out of prison, will chiefly depend.

In consequence of the retention at the Reception Prison of the sick, the defective, and those requiring special care, the problems of other prisons will be immensely simplified. Hospital accommodations will be restricted to those required for emergency cases, and each prisoner will have definite industrial capacities. Thus the greater expense of maintenance in the Reception Prison will be offset by the saving in other prisons due to the highly selected type of prisoners with which they will be supplied.

When a prisoner becomes seriously or chronically ill in another prison, or is in need of reëxamination or special observation to determine his mental or physical condition, he will be returned to the Reception Prison at which all scientific facilities will be concentrated. At the time of discharge, each prisoner will be returned to Sing Sing where he will be very carefully reëxamined. In this way it will be possible to determine what prison life under favorable conditions actually does for the prisoner. Its effects upon him mentally and physically, as well as morally, can be ascertained, while if such a prisoner is readmitted to Sing Sing it will be possible to learn also what the effects of community life have been.

The Reception Prison, the functions of which have been briefly reviewed, is the latest development in the field of scientific penology, and so far as the application of medical and psychiatric information can help, should both test the real utility of the prison system and devise the means whereby ineffectiveness can be overcome and reconstructive measures be made available for each individual prisoner.

CHAPTER III
THE PRISONER — WARD OR SLAVE?

BY KARL W. KIRCHWEY
Of the New York Bar

CHAPTER III

THE PRISONER — WARD OR SLAVE?

“THIS nation cannot continue half slave and half free” was the doctrine of Lincoln and written through the bloodshed of the Civil War into our Constitution. Yet one segment of our population was seemingly not included in the sweeping declaration; the segment that behind prison walls is paying the penalty for the perpetration of crime.

The Thirteenth Amendment to the Constitution of the United States holds “that neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.” By inference at least this amendment can be read to sanction slavery, as well as involuntary servitude, as punishment for crime.)

Slavery or involuntary servitude as punishment for crime is not limited to this country nor to this day and generation. It is a survival from next-to-primitive days. The earliest form of punishment was death or expulsion from the family or tribe, but as soon as the tribe gathered unto itself goods and chattels, the evildoers, like the prisoners of war, were held as captives to perform the menial duties.

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This continued through Roman days in the *servi poenæ* who labored in building the great Roman highways and manned the galleys, to the feudal days when resort to the hangman was found less costly.

The beginning of the eighteenth century witnessed revulsion from the hangman's methods and also a demand for laborers for the colonies; deportation into slavery resulted as substitute for the hangman. In brief, as Doctor Whitin has analyzed the situation, "The economic value of the labor of the wayward individual has directly affected the method of his punishment."¹

The upheaval of the French Revolution has left its mark on the treatment of the French convicts. Since the fall of the Bastille, wage for their labors has been granted not as a privilege but as a right. Thus was one element of slavery swept from the lot of the French convict by that great holocaust!²

In this country, as in England and Germany, wage has never been deemed the right of the convict. It has been granted at times for overtime work or to stimulate activity and lead to increase in the output, but never has the right to wage been established. It has been urged before legislatures, discussed by reform gatherings, and preached from pulpits. To-day we have labor without compensation in practically every prison in this land.

Is this tolerated because the Constitution may be construed to permit slavery as punishment for crime? Does the lack of wage constitute a slave

¹ "Penal Servitude", E. Stagg Whitin, C. I.

² "Le Travail dans les Prisons", Roger Roux, p. 31.

status, or, taken in conjunction with other elements in the convict's lot, does it create a condition of slavery? Is the status of the convict slavery, servitude analogous to slavery, or totally different therefrom?

The exact status of the prisoner in this respect has never been fully defined by the courts, though an interesting legal problem is involved and the decision might have far-reaching effect. Should it be held that slavery is actually imposed as punishment for crime, would our modern conscience tolerate its continuance? Would not a readjustment of our whole prison system follow such a decision?

The National Committee on Prisons and Prison Labor decided to bring the matter before the courts, and in 1913 instituted a test case in Rhode Island, the constitution of which prohibits slavery without mention of involuntary servitude and without the exception as to punishment for crime found in the federal and most of the State constitutions.

The Rhode Island State Board of Control has full power and authority over the labor of prisoners and other inmates of State institutions and is empowered "to sell the products of such institutions and make such contracts respecting the labor of the prisoners and inmates as it shall deem proper." The statute which authorizes the contracting of the labor of the prisoners provides further that "all orders, agreements and contracts made by said board in respect to such labor shall be binding upon the prisoners and inmates."¹

¹ Rhode Island Public Laws, 1912, c. 825, § 21.

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A contract was entered into December 24, 1912, between the Rhode Island Board of Control and the Crescent Garment Company, under which the latter hired the labor of not less than 250 prisoners, furnishing the necessary machinery, material and supervision to keep all these convicts employed, and paying the State fifty cents for every dozen shirts manufactured under the agreement. The Board of Control agreed to furnish all the factory room, power, heat, and light necessary for the proper conduct and operation of the manufacture and all the transportation of materials, supplies, and manufactured articles from and to the railroad station.

The status of the prisoner forced to work under the terms of this contract was considered by the National Committee on Prisons and Prison Labor to possess all the essential attributes of slavery, and the statute authorizing the contract to be in contravention to the provision of the State Constitution prohibiting slavery.

The Committee therefore backed an ex-prisoner who brought suit against the former and the present contractors for wage for his labor during the time he had worked under their contracts.¹

The case was heard before the Supreme Court of Rhode Island in November, 1914. George Gordon Battle, the counsel for the plaintiff, argued that the Rhode Island constitution is self-executing and applies equally to negroes and white persons and established the fact that the framers of the con-

¹ State of Rhode Island, *Anderson and Crescent Garment Company*, Supreme Court, C.Q. No. 455.

stitution were too familiar with the discourses on slavery,¹ to have intended that the word "slavery" should be restricted to "African Slavery": or in other words that it is inconceivable that the people of Rhode Island when they enacted the Constitution, would be willing to do less than was accomplished by the Thirteenth Amendment or permit any form of human bondage to flourish within the borders of the State. Furthermore, the Rhode Island fathers must have known that Illinois, Indiana, Michigan and Ohio had enacted anti-slavery clauses at a much earlier date, yet all modified the prohibition by the exception as to punishment for crime. The people of Rhode Island too could have included the exception, but their language is clear and final. They prohibited slavery — slavery in every form, under any guise whatsoever.

The definition of slavery, advanced by Mr. Battle as the most careful and accurate to be found in the books, was that laid down in *Plessy v. Ferguson*:² "Slavery implies involuntary servitude — a state of bondage; the ownership of mankind as a chattel, or at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property and services."

According to this definition the elements of slavery are: (1) The control of the labor and services of a person, (2) for the benefit of another and (3) the absence of a legal right in the former to dispose of his own person, property and services.

¹ Kent's Commentaries appeared in 1827 and was undoubtedly familiar to all the lawyers who took part in the framing of that agreement. In his thirty-second lecture (p. 247, *et seq.*) Chancellor Kent gives a full discourse on slavery, Greek, Roman, feudal, etc.

² *Plessy v. Ferguson*, 163 U. S. 537, p. 542.

Under the contract, it was pointed out, the services of the plaintiff were controlled directly by the contractor; the benefit or profit from these services accrued to the contractor, subject to the fixed payments to the state, the plaintiff being entitled to no benefit from these services; and, moreover, the plaintiff was without legal right, under the contract to dispose of his own person, property or services, either by working for the state, some other contractor, or himself, or by not working at all. As to his person and services this is clear. His right to the disposal of his property was equally non-existent; a convict may not make a will or any conveyance of his property or any part thereof during his imprisonment.¹

The lack of a right to compensation was an essential characteristic of slavery as it existed before the Civil War. The prisoner, it was shown, might receive compensation at the will of the Board of Control; so might the slave in the South be permitted by his master to receive wages as his own property.² Slaves in Louisiana had a legal right to wages for work done on Sunday, even against their masters, while an early South Carolina case upheld the right of a slave as against her master, to retain wages which he had permitted her to acquire and keep as her own.

In spite of this apparent exception, however, the absence of a legal right to demand compensation for work involuntarily done may be described as an infallible attribute of slavery.

¹ *Kenyon v. Saunders*, 18 R. I. 590, 592; Public Statutes of R. I., c. 248, § 52.

² *Guardian of Sally v. Beaty* (S. C.), 1 Bay 260; *Rice v. Cade*, 10 La. 288, 294.

The fact that the plaintiff's term of confinement and compulsory service terminated at a fixed date was shown not inconsistent with the status of slavery. In at least one state the negro was recognized as a slave even though he had a definite right to freedom at some future date.¹

The power to contract was not entirely withheld from the negro slave. In Louisiana and Tennessee, contracts between slaves and their masters whereby the master agreed to free the slave on a future date, or on the payment of a certain sum, were valid and enforceable.² Similarly, in certain jurisdictions, negro slaves were capable of entering into valid contracts of marriage. In Tennessee this was permitted at common law, if done with the master's consent, and also by early statutes in New York and Massachusetts.³

The status of the convict was not essentially different from that of a slave even in the matter of protection from brutality. The protection of the convict is only secured through the constitutional prohibition against cruel punishment, and by a statute forbidding whipping or other corporal punishment except under the direction of two members of the State Board.⁴

The Southern slave owner did not have absolute power over the person of his slave: for mere disobedience he was entitled to administer only such punishment as was appropriate to the case without

¹ *Jameson v. McCoy* (Tenn.), 5 Heisk 108.

² *Gaudet v. Gourdain*, 3 La. Ann. 136.

³ *Andrews v. Page* (Tenn.), 3 Heisk. 635, 668. *Oliver v. Sale* (Mass.), Quincy 29 Note. *Jackson v. Lervey* (N. Y.), 5 Cow. 397.

⁴ General Laws, 1909, p. 1337, § 23.

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endangering the life or limb of his slave. The slave might lawfully resist his master in defense of life or limb; and if the master killed him in the ensuing conflict, it was murder.¹ There is nothing in the statutes to suggest that the power of the state over the person of its convicts is restricted to any greater degree than this.

The argument for the plaintiff continued as follows:

The labor of the Rhode Island convicts had never been leased at the time the constitutional provision was enacted. The first evidence of any system of convict labor in the state appears in the year 1834 when a popular referendum was had upon the question whether a state prison should be built. The election resulted in favor of the scheme; commissioners were appointed to buy land and build a prison under a plan of "separate confinement at labor, with instructors." The prison was completed in 1838 and on November 16th four convicts were committed to its cells. While it is stated that they could "arrange and contract for the labor of the prisoners," contract for the disposal of the product of their labor is undoubtedly meant; at all events the present contract system was not adopted nor even considered for many years thereafter.²

Slowly the labor system developed. First, the solitary labor, owing to its evil effect on the sanity of the prisoners, gave way to shop labor; then a wage of $33\frac{1}{3}$ cents for each day a prisoner labored was allowed towards the payment of his fine; finally in 1852 the contract system was introduced and in 1857 we find the statutory provision that convicts

¹ *Oliver v. State*, 39 Miss. 526, 539; *Dave v. State*, 22 Ala. 23, 34.

² Report, State Prison Inspectors, 1876, pp. 16-27.

“shall be let or kept at labor . . . for the benefit of the state, in such manner, under such contract, and subject to such rules, regulations, and discipline as the inspectors of the state prison may make or appoint.”¹ An important innovation was introduced in 1874 when the Board of Inspectors was authorized, in its discretion, to pay to convicts upon their discharge or during their imprisonment to their dependents a sum not exceeding one tenth of the convict’s actual earnings during confinement.²

Commenting upon this experiment in their next report the Inspectors state :

“There have as yet been but two applications for relief under the law authorizing the inspector to pay a certain portion of the earnings of a prisoner to his needy family. But the inspectors are fully convinced of the wisdom and benefit of such a law, and regard it as a wholesome element in the discipline of the Institution. Hope is the chief factor in the moral elevation of mankind, and so far as it can be applied in this and kindred ways, to the reformation of the criminal, by inducing good behavior and diligent habits of work, it will be found successful in the production of encouraging results.”³

A further provision for wage is found in the legislation of 1877 which created the State Board of Charities and Corrections to have control over the conduct of the prison and the discipline and employment of the prisoners. This new Board was instructed to provide that the convict on discharge should be decently clothed and that in no case should he receive a sum less than five dollars.⁴

¹ R. S., 1857, c. 226, § 15.

² Laws of 1874, c. 350. See Report of Board of Inspectors, 1872, p. 10.

³ Report of Board of Inspectors, 1872, p. 10.

⁴ R. S. 1882, c. 254, § 39.

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A careful review of the prison legislation from the date of the constitution shows that while wage for convicts had not been thought of at that time, contract labor was equally foreign to the thought of that day, and was not introduced in the state until at least ten years later. Indeed, in 1842, the problem was not a considerable one, as in that year, "the number of convicts had increased to thirty-seven."¹ There is no evidence that had the framers of the Constitution considered the contract system they would have desired to except it from the anti-slavery provision, and the provision must be applied to the situation which has arisen since its adoption in the light of its general meaning and purpose to prohibit utterly the existence of slavery in any form.

The well-established facts regarding the contract system were advanced to show the reasonableness of such a proposition and that there were no grounds for claiming that a reasonable construction of the constitutional provision would forbid the denial to the State of the right to lease its convict labor to private contractors. The inevitable tendency of the contract system is to employ the convicts at tasks injurious to their health and to drive them far beyond their strength in an effort to extract the largest amount of profit for the contractor and the state. Its detrimental effect upon the free workingman employed by manufacturers striving to compete with the prison contractor and at the same time attempting to pay their employees a living wage, is equally well known. In short, the worst features of the sweat-shop system, both in and out of prison, are exhibited in every industry and state where the system of contract labor obtains. The

¹ Report of Board of Prison Inspectors, 1876, p. 27.

wide-spread public belief to this effect is shown by the number of states which have prohibited, in whole or in part, the leasing of convict labor to private contractors.

Summing up the facts of the case, it may be said that the state stands in the place of the slave-owner of ante-bellum days; and the contractor is the lessee, or purchaser for a term of years, of the services of the convict. This amounts in substance to a disposal of the convict himself, since it entails of necessity the practical control of the convict's person, as well as his services, by the lessee's agent. It is true that the latter has not absolute power over the convict's person. Neither did the lessee of a slave; he was obliged to use reasonable care and moderation in the treatment and discipline of the slave hired by him and was liable to the owner for any injury resulting from an abuse of power.¹

The fact that part of the state's control over the convict was not delegated by the Board of Control and Supply to the contractor is not sufficient to differentiate the present case. The statute obviously authorized the Board to delegate to the contractor complete control over the person and conduct of the prisoner while at work, subject to the restriction as to corporal punishment, and this power conferred by the Board, not the extent to which it was exercised, is the test of the statute's validity. A court in passing on the constitutionality of a statute is not confined to its language, but may look to its necessary or natural effect and its actual operation. Hence, a statute, which is fair on its face will be found unconstitutional if in its actual operation

¹ *Latimer v. Alexander*, 14 Ga. 259; *Craig's Adm'r v. Lee*, 53 Ky. 96; *James v. Carper* (Tenn.), 4 Sneed 397.

it leads to a result, prohibited by the constitution, or if its natural effect will be to bring about such a result. Applying such a test to the statute authorizing the State Board of Control and Supply to contract the labor of prisoners, the statute is in violation of the provision of the State Constitution forbidding slavery and must be deemed invalid.

The counsel for the defense, Honorable Herbert A. Rice, Attorney General of Rhode Island, and Mr. Zechariah Chafee, Jr., threw interesting light on the question of convict slavery. Their argument may be briefly summarized as follows :

The letting of prison labor by the state under contract is not slavery within the Rhode Island Constitution when considered both in the light of Rhode Island statutes and decisions and on general authority.

The rights and conditions of a prisoner under Rhode Island law are widely different from those of a slave. The accepted definition of slavery, "slavery as defined in our statutes means a special kind of servitude for life," puts the emphasis on "servitude for life" which was considered interchangeable with slavery. Moreover, slavery was the ownership of one human being by another and not simply the temporary service which existed in the case at bar. The word "slave" as used in the Rhode Island statutes, clearly meant a person held under the well-known institution of slavery, and not one under involuntary servitude in a general sense. The members of the constitutional convention in 1842,¹ living under these statutes, would naturally

¹ Laws of Rhode Island, 1798, p. 607. Public Laws, 1822, p. 441 (in force till 1844).

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have them in mind when they used the word, and employ it with the same meaning.

The rights of a prisoner are far wider in Rhode Island than those of a slave :

“The slave had no property rights whatever, could neither sue nor be sued, nor take by descent, there being in him no inheritable blood.”

The rights of a Rhode Island prisoner in regard to property and access to the courts may be contrasted with those of a slave :

A convict can have interest in property while a slave cannot ; a convict can sue while a slave cannot ; a convict is liable on a contractual obligation while a slave is not, this distinction remaining whether or not the convict's labor is subject to a contract. While the convict's rights are considerably limited because of his imprisonment he still retains many important rights, which a slave entirely lacks, and consequently cannot be considered a slave under our law.

Definitions and judicial descriptions of slavery, not limited to Rhode Island but based on general authority, do not apply to the situation of the plaintiff.

The only characteristics, according to these definitions, which a slave and the plaintiff have in common are compulsory unpaid labor with benefit to the private person, and confinement. There are several other important features of slavery which may be considered in the following order :

- (1) Deprivation of practically all civil rights ;
- (2) Practically complete control by a master ;

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- (3) Service for life ;
- (4) The imposition of similar disqualifications upon the offspring.

Deprivation of practically all civil rights: A slave could neither sue nor be sued, at law or in equity, except to enforce his freedom.¹ A convict can sue and can be sued and appear to defend himself.²

A slave could not contract and an attempted contract created no rights or obligations on either side.³ A convict can contract.⁴

A slave could not own property or acquire it by deed or will, except that his freedom could be willed him.⁵ A convict can acquire and own property, although according to the Rhode Island Statutes, he cannot convey it or make a will.⁶ The convict is not a mere chattel like a slave but has the same rights with regard to his person as any other man.⁷

Practically complete control by a master: A man is not a slave unless an owner is shown to exist. The convict cannot show completeness of control as paragraph sixth of the contract between the state and the Shirt Company provides :

¹ Wicks v. Chew, 4 H. and J. (Md.) 543, 547. Stenhouse v. Bonum, 12 Rich. (S. C.) 620.

² Bowles v. Habermann, 95 N. Y. 246.

³ Hall v. U. S., 92 U. S. 27.

⁴ Stephani v. Lent, 63 N. Y., Supp. 471.

⁵ Jackson v. Lervey, 5 Cow. (N. Y.) 397. Gist v. Toohey, 2 Rich. (S. C.) 424.

⁶ Avery v. Everett, 110 N. Y. 317. La Chapelle v. Burpee, 69 Hun 436.

⁷ Westbrook v. State, 133 Ga. 578, 585 (1909). St. Louis etc. Co. v. Hydrick, Ark. (1913) 160 S. W. 196.

“It is understood and agreed that said party of the first part (the state) shall at all times have the right to control and govern said inmates, to regulate their conduct and to assign the tasks to be performed under this agreement, and further to make and institute all rules and regulations for the proper discipline and guidance of said inmates, and at any time to change the same, and further to forbid and prevent any mode, or any manner or method of performing the same, that may be deemed injurious to the health, dangerous to the person, or subversive to prison discipline.”

Under such circumstances the relation between the Shirt Company and the plaintiff is not even so strong as that of master and servant.

Other cases are cited which hold that the contractor is not liable to an outsider for injury caused by a convict's negligence, as the latter was not a servant;¹ and that the contractor is not liable for the willful act of a convict leased, since the state had control, even though the injury was on Sunday when the contractor paid the convict for his labor.² This case is especially strong because the convict was receiving pay from the contractor, yet even this circumstance, in addition to those which existed in the case at bar, was not sufficient to make the contractor master of the convict.

Service for Life: Service for Life is a well-known characteristic of slavery³ which does not exist in the plaintiff's case.

¹ *Cunningham v. Bay State*, 25 Hun 210.

² *St. Louis, etc. v. Boyle*, 83 Ark. 302.

³ Pennsylvania Statute of March 1, 1780. *Barrington v. Logan*, 2 Dana (Ky.) 432, 434. *Miller v. Dwilling*, 14 Serg. and R. 442.

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The imposition of similar disqualifications upon the offspring: The children of slave women were slaves. Of course, the children of a convict are not convicts, nor can they, in Rhode Island, be subjected to any disability.

Thus, unlike a slave, the plaintiff could sue and be sued, contract, own and acquire property; he was hardly at all under the control of his alleged master, the Shirt Company; he was not in service for life; and no disqualifications were imposed upon his offspring. In view of these circumstances his condition was absolutely different from that of a slave.

The contracts for the labor of convicts existed in Rhode Island before 1842 when the constitution was drafted. An act of February 3, 1838, reads:

“Nor shall they (the inspectors of the state prison) be in any way interested in any contract for the supplies for the same (the prison) or the labor of the convicts.” Thus contracts for the labor of convicts were in sufficient common use to make it desirable that those in charge of the prison should be prohibited from having any improper personal interest in such contracts. If the word “slavery” in the constitution was intended to have a wide meaning and include the letting of prison contracts, why were such contracts suffered to continue and why five years after the constitution was drafted did the legislature, which included many members of the constitutional convention, expressly provide for contracts for prison labor? ¹

Thus, although the validity of the prison contracts has never been before the courts, it has been repeatedly recognized by legislators through a period

¹ Public Laws of Rhode Island (1844-1857), p. 672.

of over seventy-five years, nor has it been questioned by any person until this suit was brought. Such protracted, continuous and thorough acquiescence, if not conclusive, is a strong argument, and the settled opinion and practice of many legislatures is entitled to serious consideration, even if it has not the authority of a judicial decision.

If it is not slavery for the state to employ the prisoners in making articles which are sold by the state to an outsider, who resells them at a profit to himself, then it is not slavery for the state to oblige the prisoners to work on materials furnished by an outsider when the state retains control over the prisoners and is paid by the outsider for their labor. In both cases, they are servants of the state and controlled only by the state. In the one case, the state furnishes goods to an outsider; and in the other, labor, just as when a carpenter brings his gang to work on a house. The gang does not become the servants of the owner of the house. It may be said that it is slavery for the state to oblige the prisoners to work for the profit of the contractor, but there is a similar profit for the contractor if he buys goods from the state and then resells.

The question of slavery or no slavery can hardly be said to depend upon whether the state is paid an adequate price for the labor of the prisoners.

Moreover, even when the prisoners are employed on material furnished by the state, private persons may profit. Shortly after Rhode Island had prohibited slavery in its constitution the legislature provided that "the keeper of each county jail, except the jail of the county of Providence, shall be allowed in full for his services under this Act, fifty per cent of all profits on the labor done under his care and

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oversight by prisoners committed to such jail." If the plaintiff was a slave of the shirt factory, then the prisoners under this statute were slaves of the keeper.

The consideration of the provisions as to slavery in other constitutions shows that it does not include prison contract labor.

The provision in the federal constitution regarding slavery came from the ordinance of 1787 enacted by the Continental Congress for the government of the Northwest Territory. The federal constitutional amendment abolishing slavery was in fulfillment of the plank in the Republican platform of 1864: "We are in favor of such an amendment to the constitution, to be made by the people in conformity with its provisions, as shall terminate and forever prohibit the existence of slavery within the limits of the jurisdiction of the United States."

This plank makes no exception of slavery as punishment for crime. The reason for the addition of "Involuntary servitude" is given by Justice Miller¹ who explains that the word "slavery" was too narrow to apply to imperfect forms of servitude, or in the words of Professor Willoughby:² "Its terms were purposely made broad enough to include not only the slavery of any person, whatever his race or color, but his involuntary servitude save as a punishment for crime."

Punishment for crime is the one kind of involuntary servitude which properly could not be forbidden. Therefore, as Professor Willoughby says, the exception was made to the prohibition of involuntary servitude. Some commentators on the con-

¹ Slaughter House Cases, 16 Wall. 36, 42.

² Constitution, p. 850.

stitution have considered that it is also an exception to the prohibition of slavery. This question has never been passed upon by the courts but it is inconceivable that a man convicted of crime should be condemned to the condition of a negro slave before the Civil War and the exception in the thirteenth amendment can be said to modify only the words immediately before, "involuntary servitude", and not the word "slavery." Slavery is absolutely forbidden by the Thirteenth Amendment as well as by the Rhode Island Constitution, and if prison contract labor is illegal slavery in Rhode Island it is illegal slavery throughout the United States. Yet no case has ever arisen contesting its constitutionality on this ground, and the United States Supreme Court has decided litigation connected with prison contract labor without question as to its validity.¹

The prohibition of the Rhode Island Constitution is not wider than that of the federal constitution; it is narrower. In the absence of any information, the word "slavery" must be taken in the sense usual at that time and applied to the institution of slavery as it then existed. It could not for instance be applied to the white slave trade.

The upshot of the discussion is this. "Slavery" in the Federal Constitution has been regarded as a narrow term, meaning an institution like that which formerly existed in this country, and "involuntary servitude" was added to include imperfect forms of compulsory labor. There is no reason to suppose that "slavery" had a wider significance in the Rhode Island Constitution.²

¹ *Nugent v. Arizona Co.*, 173 U. S. 338.

² *R. I. State Constitutional Journal*, etc. (In Library of the Rhode Island Historical Society, R. 34 J.)

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In many constitutions there is possibly an exception of slavery in punishment of crime, but such a construction is objectionable and if it is not taken, the existence of prison contract labor under those constitutions, particularly that of the United States, is an argument that such labor is not slavery. In the Constitution of Rhode Island and several other states, no such exception can possibly be construed, and the long-unquestioned establishment of prison contract labor in all of these states except Ohio is a serious obstacle in the way of the plaintiff. The judiciary of one of these states, Alabama, has expressly declared that prison contract labor is not slavery.¹

Comparison is made between the system of contracting the labor of convicts and of apprenticing minors without pay to be skilled mechanics. The servitude in cases of apprenticeship is held nearer slavery than in the case of the convict because the latter did have a choice whether or not he would commit the crime while the minor has no choice in the matter, absolute power to bind him out being in the hands of his father.²

The binding out of the pauper children and adults by the overseer of the poor is analogous to the case at bar. A decision that prison contract labor is slavery would necessarily result in a declaration that this method of lessening the burden of pauperism on the public is also slavery, though it has prevailed since 1741 and is provided for in the very statute which abolished slavery.³

¹ *Buchalew v. Tennessee Coal, etc., Co.*, 112 Ala. 146, 157 (1895).

² General Laws 1909, c. 249, § 1, *Nelson v. People*, 33 Ill. 390 (1864), *semble*.

³ *Exeter v. Warwick*, 1 R. I. 63, 65; *Kennedy v. Meara*, 127 Ga. 68, 77.

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Employment of prisoners at hard labor is a long established practice in all the states which clearly abolish slavery without exception as to punishment for crime, yet in no case has it been held to be slavery.¹

Other forms of compulsory labor which are closely connected with the functions of the state and public welfare have not been held as slavery; compulsory labor on streets with imprisonment as a penalty for refusal,² compulsory military service,³ compulsory service by merchant sailors who attempt to desert,⁴ working out fines for violations of municipal ordinances not amounting to crimes.⁵

To sum up the arguments for the defence:

The plaintiff was not a slave, because the defendants had none of the control over him which a master has over his slave; because prison contract labor has never been held to be slavery in this or any other state which absolutely forbids slavery, and because it is declared by the Supreme Courts of Illinois and Georgia not to be slavery; because it existed when the Rhode Island Constitution was drafted, and was expressly continued by a statute passed soon afterwards, and reënacted over and over again, so that all contemporary and legislative opinion in this state supports its constitutionality; because hard labor and other analogous forms of involuntary servitude are not slavery; and because a direct Rhode Island decision⁶ and many other

¹ *Topeka v. Boutwell*, 53 Kan. 20; 27 L. R. A. 593 (1894).

² *Re Dassler*, 35 Kan. 678, 684 (1886).

³ *Peonage Cases*, 123 Fed. 671, 681 (1903).

⁴ *Robertson v. Baldwin*, 165 U. S. 275, 282.

⁵ *Mayor, etc., of Monroe v. Meuer*, 35 La. Ann. 1192.

⁶ *Kenyon v. Saunders*, 18 R. I. 590.

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cases ¹ show that a convict, whether under a labor contract or not, has opportunities and rights completely denied to a slave.

The temporary and limited effect of a prison contract upon the laborer, and its public purposes, differentiate it sharply from the complete private appropriation of labor forbidden by the slavery clause of our constitution.

The logical conclusion is that the statute authorizing the prison contract is not in conflict with the constitution and the contract is legal.

In the Reply Brief for the plaintiff we find further consideration of the authorities relied upon by the defendant :

The Counsel for the defence, it is stated, argued from the statute of 1798, which seems to use "slavery" and "servitude for life" as synonymous terms; they also claimed that the constitution of 1842 used the word "slavery" in the same limited sense.

This conclusion does not follow. The Act of 1798 was a very partial abolition of slavery compared to the constitutional provisions, both state and federal, which came after it. For example, Section I provided :

"That for the future no negro, mulatto, or Indian slave shall be brought into this State; and if any slave shall hereafter be brought in, he or she shall be and hereby is rendered immediately free, so far as respects personal freedom and the enjoyment of

¹ Previously cited in this article.

private property in the same manner as the native Indian; provided nevertheless that this Act should not be deemed to extend to the domestic slaves or servants of citizens of other states or of foreigners traveling through the State or coming to reside therein, nor to servants or slaves escaping from service or servitude in other states, or in foreign countries and coming of their own accord into this state."

It is apparent that the intention of this Act was not absolutely to do away with human bondage within the state.

The simple, direct provision of the constitution of 1842 evidences quite a different intention. "Slavery shall not be permitted in this state." The absence of definition or qualification suggests an intentional broader use of the term. It is impossible to believe that the framers of the Rhode Island Constitution in 1842 — only 19 years before the outbreak of the Civil War — intended to permit, even in a qualified form, the existence of human bondage within the state.

The assertion, sustained by reference to the Act of 1838, that prison contracts existed prior to the constitution does not hold, in that the report of the Board of Inspectors in 1876 definitely states that the contract system was introduced in 1852. The same report shows that "on the 16th of November of that year four convicts were committed" to the cells of the State Prison. If the contract system obtained among these four prisoners — and we may safely take the word of the State Prison Inspectors that it did not — it must have been a somewhat insignificant problem, not in the minds of the framers of the Constitution.

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Regarding the "chief characteristics of slavery" enumerated in the defence, it has been earlier shown that all of these disabilities attached to the ordinary slave in most of the Southern States, but that nearly all of them, either by statute or common law, were partially removed in several states of the South. In short, they were the usual but not the necessary incidents of slavery as it obtained in the South before the Thirteenth Amendment.

The statement that the convict is not a mere chattel like a slave but has the same rights with regard to his person as any other man can hardly hold when viewed in the light of the following statute provision :

"A warden in charge of convicts working on a county chain-gang has no authority to administer corporal punishment to a convict except such as may be reasonably necessary to compel the convict to work or labor in the execution of his sentence or to maintain proper discipline." ¹

The inference is that in the absence of such statute provision, there would be no limitation on the power of the warden, while even under this statute the condition of the convict is not substantially unlike that of the old time slave.

A decision holding that the convict is not the contractor's servant seems rather irrelevant to the question of the status of the convict himself. Besides it is not necessary to a condition of slavery that a slave be subject to the control and direction of a single person, the contractor. The control may well be divided, as in this case. If the convict were owned outright by the state and his services

¹ Westbrook v. State, 133 Ga. 578.

leased to the contractor, no one would question that a state of slavery existed; yet such a control would be as divided as it is in the present case.

It has been argued that the qualification "except as a punishment for crime" in the Federal Constitution does not apply to slavery, but only to involuntary servitude. The language and punctuation of the Thirteenth Amendment do not seem to justify this interpretation. It is natural, however, that judges should be unwilling to concede, when they do not have to decide, that slavery in its narrowest sense — the ownership of mankind as a chattel — is permitted by the Thirteenth Amendment even as a punishment for crime.

It does not follow, however, that slavery in its broader sense is not excepted from the prohibition of the Thirteenth Amendment along with involuntary servitude. Even if it were so it would not follow that the system under which the plaintiff's services were sold to the defendant does not constitute slavery within the meaning of the Rhode Island Constitution.

The prevalence of the Contract System in other states whose constitutions forbid slavery in any form is slight argument for the legality of the system when it has not been the subject of direct judicial attack on that ground.¹

That no analogy ought to be established between contract labor and the employment of prisoners at ordinary hard labor has earlier been discussed. Apprenticeship and compulsory service are disposed of by the Supreme Court as follows: ²

¹ In *Buckalaw v. Tennessee Coal etc., Co.*, 112 Ala. 146.

² *Clyatt v. United States*, 207, 218 (1905).

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“We need not stop to consider any possible limits or exceptional cases such as the services of a sailor,¹ or the obligations of a child to its parents, or of an apprentice to his master, or the power of the legislature to make unlawful and punish criminally an abandonment by an employe of his post of labor in any extreme cases.”

Clearly the punishment of crime was not considered one of these implied exceptions by the framers of the Thirteenth Amendment, or they would not have included it expressly.

The binding out of pauper children as apprentices by the overseer of the poor is hardly an analogous case. The opinion in regard to binding out pauper children states :

“Therefore it necessarily follows that when the state has to assume the control and custody of the child, its conduct towards it would be the same that a dutiful parent would exercise, keeping in view the welfare of the child.”²

No argument is needed to show the difference between that case and this. That the state stands in *loco parentis* to the convict, and leases his services to a private contractor with an eye to the convict's welfare, will hardly be contended.

Prison contract labor is primarily a benefit to the private contractor and incidentally a benefit to the state. The vast discrepancy between the compensation paid the state under such a contract and the wages paid free labor is demonstration

¹ *Robertson v. Baldwin*, 165 U. S. 275.

² *Kennedy v. Meara*, 127 Ga. 68.

thereof. The private rather than the public nature of the benefits derived from such contracts, as well as their detrimental effects upon the convict, the state, and the public at large have led to the abandonment of the system in many states.

The opinion handed down in February, 1916, some fifteen months after the case was heard, was by Chief Justice Johnson.

The court, in a lengthy and elaborate opinion, sustained the arguments of the plaintiff's counsel that the clause of the Rhode Island Constitution under consideration had the same effect upon slavery as the Thirteenth Amendment to the Federal Constitution, that slavery as a legal status ceased to exist within the state upon its adoption, and that this provision, while designed to forbid slavery as it existed in this country and had existed in Rhode Island, doubtless applied equally to all races of men. The point to be determined, then, was whether the condition of the plaintiff was slavery.

The court found that "The condition of slavery sought to be established is a synthetic slavery made up from the incidents inherent in the conditions of being a convict lawfully under sentence and the fact that said convict was compelled to work pursuant to the contract made under the statute.

"As we have seen," the opinion reads, "the alleged direct control by the contractor is not present. The plaintiff's inability to dispose of his person, property and service, is in no way due to the contract of which he complains, but is an incident of his condition as a convict. Then, on the other hand,

there are present rights which are not those of a slave, as the right to sue and the right to enter into a contractual obligation in the necessary prosecution of his suit; and in short all the rights of an ordinary citizen which are not necessarily taken from him by reason of his condition as a convict. The condition of alleged slavery which he has constructed fills the requirements of no definition, which has been cited, not even the one he selects as the most accurate one to be found in the books. That requires 'a state of bondage — the ownership of mankind as a chattel.' That portion of the definition he passed by and depends upon the remaining portion, viz.: 'at least, the control of labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property and service.' Of the portion thus selected, the words: 'the control of labor and services of one man for the benefit of another' constitute the sum total of material for the construction of the condition of slavery claimed, as 'the absence of a legal right to dispose of his own person, property or services' is incident to his legal status as a convict under sentence for a term in State Prison, and does not in any way result from the contract. As to said first part of said selected portion of the definition, his counsel seem to recognize the necessity of a master for a slave and say that 'the labor and service of the plaintiff were controlled directly by the contractor,' which is not alleged in the declaration, adding 'and he was compelled by force and threats, against his will, to perform tasks assigned him,' which last is alleged in the declaration, but the declaration fails to allege that he was thus compelled by the defendant.

"As has been seen, it is not claimed that to cause a prisoner to work for the State is a violation of the constitutional provision forbidding slavery, but that

to cause him to work upon the materials of another than the State, under a contract between such other person and the State, under the control of the State, in the prison of the State, the State receiving compensation therefor, results in the transformation of the labor which is imposed upon the convict as a part of his sentence, into that of a slave, and constitutes a condition of slavery. If this contention is sound, it follows that while the State may compel the convict to work for the State upon the materials of the State in its workshop situated in the prison, the State must own the materials upon which the work is done or the convict cannot be lawfully compelled to work. The State must therefore engage in business in which it directly employs the convict upon its own material or it cannot lawfully compel him to work at all.

“Does the convict work any the less for the State when he is compelled to work upon the property and with the appliances of a contractor with the State, in the prison of the State under the control of the State, for a wage paid to the State by the contractor under a contract made with the State, than when he so works upon materials owned by the State? It is claimed that he is compelled to work for the benefit of another and not for the State. True, his labor is done upon materials which are not the property of the State. The contractor with the State, however, only has the labor done thereon for which he pays the State, and which it was the right of the State to have done as a part of the sentence imposed upon the convict. We cannot think that the condition of the convict is changed by such work upon the materials of the contractor from his condition as a convict into that of a slave, either of the State or the contractor.

“We see no reason to doubt that, in adopting Section 4 of Article I of the Constitution, the conven-

tion and the people had in mind slavery as it then existed in some of the states of the Union and as it had existed in this State.

"The word 'slavery' at that time was used both in our statutes and in common parlance to mean a very definite thing, namely, the institution of slavery. We see no reason to suppose that it was used in the constitution in any other sense. The fact that prison labor existed, without question, contemporaneously with the adoption of the constitution is also strong evidence that the prohibition was not intended to include such labor. The long acquiescence in the legislative exercise of the power to let prison labor, beginning January, 1847, is also a strong argument in favor of the validity of that power.

"We are of the opinion that the plaintiff has entirely failed to establish his contention that his status under said contract was that of a slave."

The court has thus decided that the contract system of convict labor, when the contractor is not given absolute power to enforce his control over the prisoner, does not create a slave status for the prisoner. What would be the opinion in the case of a contract such as that, dated January 20, 1858, between Thomas W. Hix, Warden of Maine State Prison, and David H. Summer and Henry Maxcy, the contractors? After providing that the contractors shall feed and clothe the convicts, the contract continues "and it is hereby further stipulated and agreed that the aforesaid overseers in the several departments of labor shall perform all the duties of disciplinarians and turnkeys, and be paid by the said Summer and Maxcy." This would appear

to give definite and complete power of enforcement to the contractors. Would it create a slave status for the prisoners?

We know that the convict is not a freeman; the Rhode Island court has decided that under the contract system when the contractor has not absolute power of control over the convict the latter is not a slave. We have yet to learn what the precise status of the convict really is. Is he the slave of the State, a ward of the State, or does he occupy still some other status?

To answer the question we must know the true interpretation of the Thirteenth Amendment. Does this amendment sanction slavery, or merely involuntary servitude as punishment for crime? A final and satisfactory answer to this question can only be had from the Supreme Court of the United States. Meanwhile, however, the principles and spirit of modern penology point to the abolition of uncompensated prison labor, along with other survivals of the outworn theory that the convict is an outcast from society and has no human rights which the State sees fit to withhold.

CHAPTER IV
THE CONTROL OVER THE PRISONER

PART I — FEDERAL

BY GEORGE GORDON BATTLE

*Chairman, Committee on the Federal Office of Prisons,
National Committee on Prisons and Prison Labor*

PART II — STATE

BY E. STAGG WHITIN, PH.D.

*Chairman, Executive Council, National Committee on Prisons and Prison
Labor*

CHAPTER IV

THE CONTROL OVER THE PRISONER

PART I — FEDERAL

THE Constitution of the United States makes no provision for the punishment of crime other than the violation of the laws of the United States as they affect international relationships, cases of admiralty and maritime jurisdictions, and the relationships between the several States, between citizens of different States, and between a State or the citizens thereof and foreign States, citizens or subjects.¹ All other matters relative to the perpetration of crime and the punishment of the criminal come under the jurisdiction of the several States. Imprisonment for violation of our international relationships has been very rare, while, until a few years ago, there were few statutes regulating interstate relationships under which convictions were made; moreover, of the more serious offenses, prior to 1892, sixteen were punishable by death!² The result has been that the number of prisoners held directly under Federal control has been restricted to the military and naval prisoners and to men convicted of such offenses as tampering with the mails or stealing stamps, pension

¹ Constitution of the United States, Art. III, § 2.

² Gen. Newton Marten Curtis, Speech before the House of Representatives, June 9, 1882.

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frauds, infringement of patent rights, and the offenses of the frontier — cattle stealing, and fraudulent registration of homestead rights. The policy of the Federal Government has further limited the number of prisoners, for the control of which it is directly responsible, by boarding out its prisoners in State and county institutions, where they are subject to the same rules and regulations as other prisoners in those institutions. These several factors have contributed to render the development of our Federal penal system of minor importance, and to-day we do not look to the Federal Government for leadership in prison matters.

This state of affairs cannot continue. The advancement of the theory of general governmental supervision has greatly increased the number of statutes under which prosecutions are made. The greater number of national banks and the severity of the laws regulating these institutions have resulted in a corresponding increase in the number of persons prosecuted for violation of the national banking statutes. The Department of Agriculture is doing salutary work in attempting to keep pure our supply of foods and drugs. To accomplish this a number of penal statutes have been enacted under which innumerable criminal prosecutions have been instituted. So in other departments of government, the field of operations is being extended with an attendant increase of criminal prosecutions to enforce the law. The present attitude toward capital punishment also tends to increase the number of Federal prisoners, for although the death penalty is still

retained by statute for murder, rape, and treason, the jury is given the option of life imprisonment even for the grave offense of treason. The growing opposition to the exploitation of the prisoner under the lease and contract system has forced the withdrawal of all Federal prisoners from State and county institutions where such systems prevail, and the retention of these prisoners in the Federal institutions.

A decided increase in the number of Federal prisoners has resulted, and the tendency is that this number will grow greater and greater, while we must also remember that public standards as to the treatment of the prisoner are steadily becoming higher, and the public will naturally expect from the Federal prisons conformance with the standards, if not the leadership, already pointed out as lacking to-day. The control over Federal prisoners presents, therefore, problems of increasing difficulty, and makes imperative a well-conceived plan, and a well-equipped plant to carry out the plan.

The present system falls far short in both these essentials. The responsibility for the Federal prisons is to a great degree vested in the Department of Justice, a department overburdened with its many other duties. Even though certain matters are and have been from time to time under other departments — State, War, Labor, and the Interior — this does little to lessen the real burden while it gives rise to the many difficulties which follow divided authority. The situation can best be made clear by a brief survey of the development of our Federal prison system and the forces that have directed its operation.

Congress in 1821 directed that Federal prisoners be quartered in State prisons and penitentiaries, subject to the approval of the State, and at the same time such prisoners were placed under the custody of United States marshals, under the direction of the Federal judges of the various districts.¹ Thirteen years later it was decreed that all prisoners quartered in State institutions should be subjected to the same discipline and treatment as the prisoners of the State or territory in which the institution was situated.² Territorial prisoners were brought under the jurisdiction of the Attorney-General in 1871, the latter being empowered to prescribe all needful rules and regulations for their government, though the United States marshals were made responsible for the enforcement of these rules and regulations.

The cost of maintenance, custody, and control of all prisoners in "a territory in which there may be no penitentiary or jail," was in 1864 authorized to be met out of the judiciary fund of the Department of Justice.³

We have noted that Federal prisoners quartered in State institutions were placed under the custody of the United States marshals, yet statutes were enacted in 1870, 1875, and 1891 providing that such prisoners might receive a deduction of time for good conduct upon a certificate of good conduct from the local warden or keeper, subject to the approval of the Attorney-General.⁴

¹ U. S. Compiled Stat., 1901, Sec. 5537-5538.

² U. S. Compiled Stat., 1901, Sec. 5539.

³ U. S. Compiled Stat., 1901, Sec. 5540.

⁴ U. S. Compiled Stat., 1901, Secs. 5543-5544.

The Federal government was forced to make further provision for its prisoners in 1887, when it was enacted that the Government of the United States should not contract with any person or corporation for the labor of prisoners, nor permit prisoners to remain in any institution where the contract system obtained.¹

Responsibility for Federal prisoners was placed upon the Secretary of the Interior as early as 1854 when the warden of the penitentiary of the District of Columbia was instructed to submit to him his annual report.²

The Secretary of the Interior was further instructed by a statute of 1874 to transfer, upon the application of the Attorney-General, to the Insane Asylum in the District of Columbia all Federal prisoners who during the term of imprisonment should become insane.³

This act in 1882 was amended to include "all persons having been charged with offenses against the United States who are in the actual custody of the officers."

The Attorney-General and the Secretary of the Interior in 1891 were jointly directed to purchase three sites for prisons for all persons sentenced to one year or more of hard labor by any court of the

¹ U. S. Compiled Stat., 1901, Sec. 5539.

Editor's Note. — Congress has begun the installation of industries in Federal prisons for the production of supplies needed by the Federal Government, by appropriating money for shops in the Sundry Civil Bill, June 12, 1917.

² U. S. Compiled Stat., 1901, Sec. 1828.

³ U. S. Compiled Stat., 1901, Sec. 4852.

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United States.¹ They were jointly to select the sites and erect the buildings, but the Attorney-General alone was charged with the expenditure of a fund of \$100,000 for the equipment of workshops where the prisoners were to be employed exclusively "in the manufacture of such supplies for the government as can be manufactured without the use of machinery." The Attorney-General was given control over these prisons, and power to appoint the necessary officers and to arrange for the transportation of prisoners, while expenses for marshals, etc., were to be met from the judiciary fund.

An attempt to centralize in the Department of Justice the responsibility for Federal prisoners can be noted in the legislation of 1895, which transferred the military prison at Fort Leavenworth from the Department of War to the Department of Justice.² This centralization was of short duration, however, as next year the Department of Justice was ordered to restore Fort Leavenworth to the War Department,³ on the completion of a new penitentiary on the military reserve, though the plans for the institution, the employment of the architect, and the matters pertaining to its construction were left with the Attorney-General.

The Department of State was drawn into the prison arena in 1896, when it was enacted that the United States subscribe as an adhering member of the International Prison Commission, the commis-

¹ U. S. Compiled Stat., 1901, Sec. 5550.

² U. S. Compiled Stat., 1901, Sec. 1361.

³ U. S. Compiled Stat., 1901, Sec. 5550.

sioner to be appointed by the President "under the Department of State."¹ Each succeeding Congress has made appropriation for the expense of this commissioner and for the proportionate expense of the Commission for the United States.

The Secretary of Labor also has his activity in connection with the Federal prison system. In 1914, in response to a Senate Resolution of November 10, 1913, he transmitted to Congress a compilation of all Federal and State laws relating to convict labor, including all legislation regulating the sale and transportation of all convict-made goods, in so far as they relate to interstate commerce; and information as to the effect on free labor of the sale of convict-made goods, together with a description of the industries in which convict labor is employed and the value of the product of such labor.²

What does it all mean? In brief, that the President appoints the United States Commissioner to the International Prison Commission who serves under the State Department. The Navy Department has control over naval prisoners; the Department of War over military prisoners, together with supervision of the prisons in Panama, Porto Rico, and the Philippine Islands. The Bureau of Labor Statistics in the Department of Labor publishes information in regard to the labor of prisoners and the products of the various penal institutions. The Department of the Interior has, with the Depart-

¹ U. S. Statutes at Large, 54th Congress, Sess. 1, C. 420, 1896.

² 63 Cong., 2d Sess. S. D. # 494, Federal and State Laws relating to Convict Labor.

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ment of Justice, the responsibility for the selection of the sites and the erection of Federal prisons. All the reports from the correctional institutions in the District of Columbia are presented to the Secretary of the Interior. The Department of Justice has full charge of the three Federal penitentiaries, in which some 2,034 prisoners¹ are confined, and the 1,180 Federal² prisoners confined in the State, county, and city prisons, the prisoners from the territories, and also the Bureau of Criminal Identification. The United States marshals, under the Federal courts, have oversight of prisoners held for trial, and lastly, the Department of Justice is responsible for the 131 convicts in the government hospital,³ which hospital is under the Department of the Interior.

The final authority in matters pertaining to the care and discipline of the Federal prisoners is vested in the Attorney-General, a prosecuting officer. His success has lain in bringing the criminal within the pale of the law, but has his experience prepared him to apply the methods which will promote the rehabilitation of the prisoner? To-day is the day of the specialist; should we not call for the specialist in the penal as in every other field?

Furthermore, there is an increasing demand that the methods of modern business shall be applied to the administration of government. This would point to the centralization under one responsible head of all the activities of a department to prevent

¹ Letter to National Committee on Prisons and Prison Labor, June 30, 1914.

² June 30, 1914.

³ June 30, 1914.

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duplication of effort, waste, and inefficiency. The National Committee on Prisons and Prison Labor has suggested that this thought be carried to the Federal Prison System; that a Federal office of prisons under the direction of a commissioner, an expert capable of applying the best thought along penal and coördinate lines, be established in Washington with authority over all Federal prisons and prisoners and power to investigate all penal institutions where Federal prisoners are confined.

This Federal office of prisons could facilitate cooperation between State agencies dealing with prison problems and conduct scientific researches for the Federal Government into the causes of crime with a view to the extermination of human pests. The Department of Agriculture is spending millions of dollars a year in exterminating insect pests, yet not one penny is at present devoted by the Federal Government to the study of human pests, of the forces which undermine and destroy the manhood and womanhood of our nation. ✓

The centralization of control would make possible the establishment of a clearing-house system and the development of a comprehensive and coördinate scheme of institutions, each equipped to meet the needs of special types of individuals as these needs are determined by scientific investigation. The Federal prisons could then become great governmental laboratories, the model for State institutions, while the discipline under which the lives of Federal prisoners are regulated could standardize prison discipline throughout the country.

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In matters penal we have passed through the period of indifference and inertia to the period of transition and uprooting of the forces which have hindered development. We next must witness the application of sane, constructive measures which will insure permanent reform. The Federal Government must perforce meet its full responsibility to the prisoners under its control and Congress insure its leadership in the penal field by the establishment at Washington of the proposed Federal office of prisons.

PART II — STATE

The businesslike administration of penal institutions is demanded by the public as a result of the exposure of the inadequacy of the methods used in these institutions to meet the conditions which they present. There has been much progress in the administration of all institutions, whether penal or educational, in the last decade. The duties of a college president, as has been so ably pointed out by President Butler of Columbia University, consisted a hundred years ago of teaching classes, whipping pupils, locking the building, and seeing that the place was clean; to-day he plans the fiscal policy three years in advance, and gives much attention to the national and international relationships of his university.

Our conception of the duties of the administrative head of a penal institution is still on the former level and will have to rise to the latter. The first requisite, therefore, to a reorganized prison administration is the reshaping of our views as to administra-

tive functions and the interesting of men of broad viewpoint and recognized ability to undertake the administration of penal institutions.

The warden who wrote "my prison is just a factory and is only interesting as such" failed to recognize the material with which he was working. Whatever our attitude toward the prisoner may be, it is clear that prisons exist to confine him and change him if possible; only incidentally must they produce marketable commodities in the way of manufactured articles. The output upon which success or failure must rest is the human output and it is generally admitted that the prison on this basis has so far been a failure.)

Conditions exist which must be recognized. Probably the most important is the fact that this human material has been selected from the community by the hit or miss method of the discovery of a crime and a man's conviction. Another important factor is that the institution has to receive every person so selected. In our more populous States, where the prison population has been distributed amongst a number of institutions, there is the possibility of a man's being placed in an institution to which he is suited, though the framers of the law even in New York State did not comprehend nor provide for such classification. To take this human material which is sent to the institutions and evalu-

EDITOR'S NOTE: The control of the prison and the production and distribution of prison commodities are discussed in "Penal Servitude." This chapter might well be read in connection with "Penal Servitude", chapters 3, 5, 7. — "Penal Servitude", E. Stagg Whitin.

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ate it so as to secure from it and for it the best possible results is the first requisite of business administration. The reception prison with a competent staff, discussed in a preceding chapter, is the method by which to accomplish the result.

Next, we must remember that the prison differs from an ordinary industrial plant in that the prison workmen are not selected because of their special qualifications for a specific job. Their individual qualifications are as diversified as those of any group that could possibly be brought together. Efficiency is secured by causing each member of a group to perform the function for which he is best suited. It will immediately become clear that an attempt to force all the members of this group of people into one factory producing one line of commodity will reduce practically all of them to the level of unskilled artisans. This has been the case when private prison contractors have leased prison workshops under contract; a man has been considered simply as one more human machine to be worked despite his interest, former training, or ability. The result is the deadening, brutalizing work, under compulsion, which confirms the antagonism of the prisoner to the community outside the prison and strengthens his determination to return to a life of crime and get square with society.

Now the prison should not be a factory but a community. We should realize that it is a community, a segment of society. The leaders of organized labor are right when they demand for the man skilled in his trade that he continue in that occupation, even

though confined within the prison. Their contention that he should not lose his skill and fail to be acceptable to the union upon release because of that loss emphasizes the fallacy of not using his skill for the benefit of the prison community.) The prison community should be self-sustaining. It should then provide an opportunity for the participation on the part of the man in every community activity.) Besides being self-sustaining, the prison can produce for the other State and county institutions, which afford a market extremely diversified. There is, therefore, opportunity to meet the diversified industrial needs of the men.

The training in a penal institution must be primarily to adjust the prisoner to a normal environment and to teach him to conform to the needs of community life.) The conception of the prison as a community is therefore of educational value as well as the means of securing the greatest efficiency from an administrative viewpoint.

The conception of the prison as a lock-up or jail is evolving into the conception of the prison as a community. The conception of the administrative head as a jailer is evolving into the conception of the governor of a self-expressing and self-developing community. A businesslike administration postulates the highest development of self-government on the part of the inmates so that as many functions as possible can be performed by them, thus relieving the State of this duty and expense. The other functions which it is impossible for the prisoner to perform, such functions as those dealing with the

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relation of the prison community to the outside world, must be performed by a well-regulated purchasing department. The goods, supplies, and other commodities which may be sold to other institutions must be under the control of a competent bureau which will keep the prison community supplied with orders and be responsible for delivery. Expert advice must be available as to the best methods for providing work for the men not only in lines where the produce is transferable to other institutions, but also in the maintenance work of the community. Should the prison possess farm acreage, the most approved methods of scientific farming should be applied both to afford the best training to men who may continue as farmers and to produce foodstuffs for the inmates of the institution. A well-balanced and properly prepared diet is essential, and an efficiently run institution with coördination between the culinary and farm departments will give appreciable result in the improved physical condition of the inmates.

The efficient organization of farm and industrial work will give opportunity to observe the varying contributions made by members of the prison community to the community. The profit from their work will become an asset which should result in a self-adjusting wage scale. The plan of paying this wage in "Token Money" is based upon administrative needs in that it insures the divorcing of the prison community from the general community, except in so far as the redemption of currency in United States coinage is permitted and guided by the administrative authorities.

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The development of a model administration based upon the community idea will necessitate growth by slow stages and by the education of both the prison community and the administrative staff. The failure most business men encounter when attempting to establish business administration in a governmental situation is that they do not realize that political life is hedged about by many limitations which are foreign to general industrial enterprises. The generation which has profited by prison graft must pass away before many of the new ideals can be attained. What is needed is a practical program, a determined endeavor, and a constant appeal to the best part of the community to support the proposition. These are parts of an adequate prison administration and call not only for an enlightened leadership, but a confirmed conviction upon the part of the men in prison and those going out of prison, that the prison administration is tending more and more to meet the test that the human material which is sent to the prisons for reshaping shall come forth the better for the refining process. As long as this conviction persists it will stay the hand of politics and corruption and make possible the business administration of the prison.)

CHAPTER V

SELF-GOVERNMENT BY THE PRISONER

PART I — SELF-GOVERNMENT IN A STATE PRISON

BY THOMAS MOTT OSBORNE

Former Warden, Sing Sing Prison, New York

PART II — SELF-GOVERNMENT IN A REFORMATORY

BY E. KENT HUBBARD

Treasurer, Connecticut State Reformatory

CHAPTER V

SELF-GOVERNMENT BY THE PRISONER

PART I

IN JUNE, 1913, the Governor of the State of New York appointed a Commission on Prison Reform for the purpose of studying the different State institutions and suggesting desirable changes in what every one agreed was a mournful and unmitigated failure — the prison system. The Commission was organized with Thomas Mott Osborne, former Mayor of Auburn and former Public Service Commissioner, as Chairman; Professor George W. Kirchwey, Dean of the Columbia University Law School, as Vice-Chairman; and Doctor E. Stagg Whitin, of the National Committee on Prisons and Prison Labor, as Secretary.

In the fall of the year (1913), the chairman spent a week as a voluntary prisoner in Auburn, to study at close quarters the system and methods then existing in the prisons and their effect upon the inmates. The most important result of the experience was the growth of a new feeling of confidence toward the Commission on the part of the prisoners leading to a desire on their part to coöperate in a new effort to reform the prison system.

ORGANIZATION. In response to a request from the inmates of Auburn Prison, Warden Rattigan, with the approval of the Superintendent of Prisons — himself a member of the Commission on Prison Reform — permitted the formation of a good conduct league, to be officered and managed by the inmates. On December 26, 1913, a committee on organization was elected by the prisoners; in January an organization was perfected, and on Lincoln's birthday, February 12, 1914, the first meeting of the Mutual Welfare League was held at Auburn. A year later the League was extended to Sing Sing Prison.

No one knew what the League could do — its activities were absolutely in the hands of the prison authorities. It has never asked nor claimed the right to act except under the consent and close supervision of the warden, and subject to his proper authority. The organization of the League is simple. Each company at Sing Sing Prison — each industrial or maintenance unit — elects one or more representatives to be the governing body of the League, the Board of Delegates. These elections must be free, without pressure or dictation from the authorities, else the men would lose faith in their representatives. The Board of Delegates, fifty-five in number (forty-nine in Auburn) elects a secretary of the League, and from its own number an executive committee of nine. The Executive Committee appoints as many assistants as it may deem necessary to keep good order and discipline in the prison.

Each member of the Executive Board is a member of one of the nine subcommittees; Membership,

Industries, Hygiene, Education, Athletics, Entertainment, Music, Visitors, and Outside Employment.

Every afternoon when there are any cases, court is held and all matters involving infraction of the rules of the prison or of the League or any violation of good order and discipline are brought before the judiciary board. The members preside in turn and a majority decides. The procedure is very simple and punishment consists of suspension from the League, with a consequent loss of all privileges. An appeal can be made in any case by any party to the warden's court, where the warden, the principal keeper, and the doctor hear and determine all matters brought before them from the inmates' court.

PRIVILEGES. The privileges granted to the League at Sing Sing have been numerous, the fundamental one of self-government within practical bounds being the most important. Elections of delegates are held every four months; and the prisoners are expected to vote without dictation or direction of the prison authorities, except that all arrangements are at all times subject to the convenience of the prison management.

The discipline of the prison is now largely in the hands of the League. The guards in the mess-hall, the workshops, the school, and chapel have been withdrawn. But while it has been found unnecessary to keep so many idle officers inside the prison, the guards on the walls have been increased.

The ridiculous and futile system of silence has been abolished. Conversation between inmates is allowed

except under such natural restrictions as would exist in any well-regulated factory.)

After work hours there is a period of relaxation, during which, within proper limits, the men are free. Baseball and the swimming pool are the favorite recreations in the summer, and walking in the winter.

After supper the afternoon count is taken in the cells, after which the educational classes and evening lectures and entertainments take place. All members of the League in good standing may attend.

AIMS. Such are the simple methods of the League. As will be seen, the particular details are comparatively unimportant. What is of vital consequence is the self-government. Human society rests upon the ability of the great majority of mankind to govern themselves. Men whose comings and goings have to be regulated constantly from outside themselves, who have no well-developed power of choice between good and evil, are properly sent to prison because they are unable to get along in a world which is too free for them to act wisely in.)

The old prison system endeavors, by harsh and brutal treatment, to make such men respect authority and reform their ways, by becoming obedient automatons, moving only according to the will of an authority outside themselves. The result was and always will be failure; for when the man leaves prison he will again be free; there will be no authority outside himself to direct his ways, except once more the police and the courts.)

The so-called "honor system" endeavors, by sentimental, kindly treatment, to make such men

respect authority and reform their ways, by becoming obedient automatons, moving only according to the will of an authority outside themselves. The result is, and always will be, failure; for when a man leaves prison he will again be free; there will be no authority outside himself to direct his ways, except once more, the police and the courts.

In other words the "honor system" results, as the old brutal system results, in men who have not been exercised in initiative, self-control, power to resist temptation; and unless these men have been so exercised, they are not fit to return to the world.

The sole aim of the Mutual Welfare League is to prepare men for real life in the free society of the world outside. That is all. It does not advocate privileges — unless the privileges can be used to develop a sense of responsibility. It does not care for entertainments unless they can be used as a means to an end and that end self-discipline. It does not seek luxuries of any kind; it cannot be bribed by a promise of mere comforts for the body; for it knows that unless the conscience be quickened there is no such thing as ultimate freedom.

Over against the brutality of the old system and the sentimentality of the "honor system" and the moral, mental, and physical pauperizing involved in both, the Mutual Welfare League sets the "square deal" which throws each upon his own resources and upon his own responsibility and holds him strictly to it.

It does not coddle the prisoner, but asks genuine, human sympathy for him.

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It does not gush over him, but tells him to be a man and to fight his own battles.

It does not crush his spirit, but encourages his loyalty to his pals and to the community.

It does not brutalize him; it provides means of training and education so that he may make of himself an efficient and honest worker.

It does not wish to produce good *prisoners*, it aims to train good *citizens*.

PART II

THE State of Connecticut, some seven years ago, appropriated nearly half a million dollars for a modern reformatory. (It was planned that this reformatory should house six hundred and should make it possible to separate men and boys between the ages of eighteen and twenty-five, who were convicted for the first time, from confinement in company with men who had been imprisoned before and might be considered real criminals.

It is interesting to note that since its creation the Board of Directors—five representative men of Connecticut, chosen to guide the destinies of this reformatory—has been kept intact; these men, with no political affiliations whatever nor financial recompense, have given their personal services not only to the selection of the location and supervision of the erection of the building, but also to the development and policy of the reformatory. The work has been of absorbing and increasing interest. The Board has been united in the high ambition for efficiency, honesty, and nobler ideals, and was fortu-

nate in having had associated with it in the organization of the work one of the ablest superintendents in this country, and one of the foremost men in penal work — Mr. Albert Garvin.

The old methods of government were in vogue during the first year of the existence of the reformatory which opened its doors in July, 1913. At the end of this time the new method of self-government, as originated and installed in Auburn Prison by the Honorable Thomas Mott Osborne, began to interest the Directors of the Connecticut Reformatory. One of the Directors was a friend of Mr. Osborne's, and with others of the Board went to Auburn at Mr. Osborne's request to study the working-out of the self-government theory through the so-called Mutual Welfare League. This League had been in operation about six months, but the results which had been accomplished, not only in increased efficiency in the work in the prison shops, but also in the morale of the men, and the astonishing coöperation which the warden received, had begun to be noticed by the public at large. It was decided to try for the boys at Cheshire some of the self-government ideas.

There was reasonable doubt in the minds of the Board, and of the superintendent, as to the capability of boys of this age to organize and manage intelligently a system such as that of the Mutual Welfare League at Auburn. However, after the boys had been called together and had been told how the League was operated and some of the privileges granted, also the results accomplished at Auburn,

they became most anxious for an opportunity to put into effect a similar plan. Delegates were elected from the different departments of the reformatory and they in turn elected their officers.

The first meeting of the Board of Control, so-called, of the Cheshire Branch of the Mutual Welfare League, was a memorable one to the Directors of the reformatory. The boys, although imperfectly organized, saw that by their efforts and by their good behavior they could ask and obtain certain privileges, never dreamed of under the old form of prison discipline. The two most important factors in a League of this kind are: first, the ability of the inmates to manage themselves without the constant supervision of the officers in charge of the prison; and, second, the privileges, the request for which must originate with the inmates, who must show themselves equal to the increased responsibility imposed when such privileges are conferred.

The Constitution and By-Laws of the Auburn League were taken over by the Cheshire Branch as a guide. These were rewritten to meet the requirements of Cheshire, and at once the boys were fired by an enthusiasm to raise the standards in all departments of the institution. Previous to this, for example, on Sunday afternoons the boys were locked in their cells, as they are to-day in most prisons. The superintendent of the reformatory at Cheshire granted the boys the freedom of the cell house for some three hours on Sunday afternoon, during which time the conduct of the inmates was guarded by the officers and delegates of the League, only one repre-

sentative of the reformatory staff being on hand, in case of disturbance. The privilege not only of walking around and visiting with one another but also of securing suitable books to read, and writing letters, means much to the boys, especially as Sunday had previously been a day to be dreaded.

The next privilege was marching to meals with music under the care of their own officers. Saturday afternoon sports and Sunday morning recreation after religious services were then granted under the same jurisdiction, while the request for certain entertainments followed.

Bad language and petty brawls which naturally are to be expected were reduced to a minimum. In addition, the Directors of the reformatory found that all dope as well as liquor was kept out of the reformatory. The delegates were interested in carrying out the wishes of the several departments they represented, but as might be expected among men and boys of this age, politics have from time to time interfered with the best success of the League. The elections to the Board of Control have been hotly contested, and on account of parole and the changing population, new officers are elected oftener than is desirable.

The parole of the boys is placed in the hands of the Directors of the reformatory, and the Board of Parole receives at its monthly meeting recommendations from the Mutual Welfare League as to the behavior and the standing of those boys who are eligible for parole, and also suggestions as to restoration of time for good conduct. The results obtained

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are remarkable : the boys feel that they have opportunity to be heard by the Board of Directors, and the Board of Parole, and that their truthful representation of conditions is conscientiously considered.

It must be understood that in the organization of such a government it is not possible simply to decide on this form of government without the personal touch of those in charge of the institution. The many questions which naturally arise in such a movement must have not only the careful judgment of those responsible for control of the institution but also the touch of sympathy and interest. The men and boys are human, and nothing appeals to them as does the assurance that those who are watching their conduct have a friendly interest in them.

There are many questions which this form of government brings up, for example, the tobacco question. It had been decided that smoking should not be permitted in the reformatory, and much disturbance came from the boys smoking despite this rule. The amount of tobacco that was brought into the institution was astounding, the boys securing it in the most unexpected ways. In the spring of 1915, through the efforts of one of the Directors, the Highway Commissioner, with the consent of the Governor of the State, accepted boys for road work. These boys were paid fifty cents per day, and the money that they made was either sent to their families at their request or kept as a credit until they should be discharged. Men working on the highway, on motors, trolley cars, and the public in general felt that they were rendering a kindness to the boys

by throwing them tobacco. This the boys naturally accepted, and when they thought they were not observed, would, as they express it, "Hike a smoke." When caught they would plead to be allowed to smoke. The question has greatly interested the Directors, for, on one hand, it is argued that most boys who have been sent to the institution have been smokers and will smoke no matter what rules are made; and, on the other hand, it is argued that boys who have not smoked should not be taught to do so at the reformatory. However, it is probable that the Mutual Welfare League will petition the Directors to grant the boys the privilege of smoking at certain periods of the day, and at other times severe penalty will be meted out to those who infringe the rules.

The League requested that in the dining room the boys be allowed to talk. This was granted, and in addition, men who had reached the honor grade were allowed to dine at their own tables, with tablecloths, etc., and the pride which they take in being treated as gentlemen is remarkable. At these tables the boys have certain delicacies, such as extra sugar and pickles, which the other boys do not have. During the meal they are officered by their own officers, with only one of the guards in attendance, to be present in case of disturbance. The most interesting current topics are posted on the bulletin boards so that the boys while at their meals may have in their minds something worth talking about.

The relieved anxiety of the guards as to disturbance is a marked aspect of the self-government

system. In other words, the officers in case of trouble know to which of the inmates to turn — in fact, most disturbances are taken care of by the inmates without attention from the officers.

There are three grades in the reformatory: first, second, and third. The boys are received in the second grade, and according to their behavior are advanced to the first grade, or if disobedient to the rules of the institution they are reduced to the third grade. The Mutual Welfare League assumes no responsibility over the third-grade boys, who are taken care of by the prison authorities, but the League does recommend that certain boys be restored to the second grade from the third.

The Inmates' Court, in which all infringements of rules are tried, is one of the most important features of the self-government system, for none of us will deny that the men who are confined in prison have a better knowledge of each other than any one else has, and if through their own officers they can settle, punish, or adjust any infractions of rules, the feeling of revenge is not so manifest as it would be if this punishment were given by State officers.

Self-government must be developed little by little from the bottom up, not from the authorities in power down to the prisoners. Each institution, as far as it is possible, should present to its inmates the opportunity to suggest and the opportunity to form an organization — which may be directed when necessary by the officials — so that the inmates may feel that they have a real part in the work of management, and that they, through their own officers, are

responsible for the work and conduct of the men or boys.

In the self-government plan as much liberty is given as the men are capable of handling. As with a child who is allowed to walk as its strength develops, so with the self-government of prisoners; they are made to feel that as fast as they are capable of carrying out certain plans they are welcomed by the officers and other opportunities given. Instead of the sullen, hangdog look we find under the old prison system, we see to-day a bright, hopeful expression on the faces of the prisoners, and a belief in the future that they will be an important factor in the community to which they will return.

Those who from the outside have regarded the prison or reformatory as a place to be dreaded or shunned, cannot fail to be impressed by the atmosphere which can be observed in institutions where this self-government is in vogue. They should compare this system with the system of handling the so-called criminal classes to be found in most States to-day.

It is only a question of time until the old prison methods are entirely obliterated. In fact those who have studied prison conditions in this country are amazed at the thought that they have been allowed to continue at all in this present day of enlightenment.

It is true that there are men confined in our penal institutions who are unworthy of effort to restore them to society, but the great majority of men are in prison through misfortune, or hereditary conditions,

or on account of crimes committed under the influence of drink, and these men are willing and glad to grasp the opportunity to show that they welcome and desire some kind of a chance to make good, and to be able to return and take their place in society.]

It is not necessary, in establishing self-government, ✓ to surrender, as many people ridiculously suppose, the management of the prison to the prisoners; it merely means that in the government of the prison the men or boys have a part which they play in establishing not only good order, but also efficiency in the work that they perform. No manufacturer who has not the active coöperation and support of the people whom he employs gets the maximum amount of production, and how can any one suppose that a prison, which must be made to pay its own expenses as far as possible, can get good results without the coöperation of the inmates?

In closing, I must beg those who may read this chapter to do one thing, and that is not to put the self-government idea aside without a personal investigation of conditions in one of the institutions where it exists. They will be convinced, I feel sure, in spite of the many improvements still needed and the errors still existing, that when compared with the old system, the new method of handling men in prison has so much in its favor that it must be everywhere adopted.¹

¹ Editor's Note.—This article was written in 1915, and describes conditions at the Cheshire Reformatory at that time.

CHAPTER VI
THE PRISON OFFICER

BY FREDERICK A. DORNER

Former Principal Keeper, Sing Sing Prison, New York

CHAPTER VI

THE PRISON OFFICER

TWENTY years of prison service under the old system and two years under the new have convinced the writer that the new prison system is as beneficial to the officers as to the men, that it is based on sound common sense and will grow stronger and stronger as officers and men realize more fully their opportunity under it. The soundness of these conclusions will be admitted by one familiar with the daily life and duties of the prison officer under the old system and under the new, which is my excuse for the following rather detailed account.

The prison officer receives no special training before entering upon his duties. He is appointed after civil service examination in which emphasis is placed on his height, age, and physical condition generally and upon "great personal courage, a kindly but firm disposition, sound judgment and discretion, inclination to carry out the orders of a superior faithfully, and a personality and temperament calculated to command respect and obedience of persons in their custody." ¹

¹State of New York, The Civil Service Commission, "Manual of Examination for Prison and Reformatory Guard."

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The possession of these characteristics, well enough in their way, can never take the place of that specialized training received by the teacher, the physician, or lawyer. The prison officer enters upon his duties ignorant of how to meet the problems which hourly present themselves; too often he covers his ignorance by roughness, which in addition to the deadly monotony of his daily duties leaves him, at the end of a few years, a "bully" or at best a machine with little human sympathy or understanding.

At Sing Sing Prison, New York, the day began for the officer under the old system when he unlocked his one gallery, counted his men, and, as the turn for his squad came, took them to the shop to wash up and on to the mess-hall to breakfast, the men being under his eye at all times and not allowed to speak while at their meal.

The officer simply could not be on friendly terms with the inmates, and was taught to believe that after a man came into State prison he didn't own the hair on his head. If an inmate spoke to an officer, the latter would yell at him loud enough to deafen him. If an officer had any friendly feeling and made any display of it, he was criticized by the other officers and called soft and unfit to do his duty by the institution.

After breakfast the squad was marched to the shop at once, and work began under the strictest discipline until eleven-thirty, when machines were stopped and the men were allowed to wash up for dinner. The officer couldn't talk to the men, except to direct their work, other matters being referred to the

authorities. The men were taken to dinner still under the strictest discipline and immediately after dinner back to the shop.

At twelve-thirty work started again and continued till four. At four-thirty the men were brought to their cells and as they went in each man took some bread, under the eye of the officer who saw that he didn't take more than was necessary. Tea was put in their cells in tin cups at four-thirty and as all the men were not in their cells till five the tea was cold and unfit to drink, a constant source of irritation. The men had for supper nothing but tea and a few slices of bread unless they bought groceries or food — boxes from outside being allowed once in two months. They were in their cells by five, and at five-fifteen the prison closed, leaving the men locked up until six-forty-five the next morning.

On Sunday morning the men were brought out at six-forty-five and taken to the mess-hall for breakfast and from there to the chapel, to the Protestant or Catholic service. All were required to attend one service or the other, tea being served to them before service. The services were over by nine-forty-five when the men were given a pan of rice or prunes and a slice of bread: that was supposed to do for dinner and supper and until the next morning. They were kept in their cells all day Sunday until six-forty-five Monday morning. You can imagine the state of the men on Monday morning after having been locked in their cells for nearly twenty-four hours. They were cross, irritable, and hard to manage on Monday: much more so when there was a holiday

on Saturday, as then the length of time in their cells was doubled.

We had considerable trouble with "dope" which reached the prison through different channels. Some of the men were constantly under the influence of a drug. Even when kept in confinement in their cells and only taken out once a week for a bath, they found some way to obtain "dope."

A large number of men were constantly locked in the lower cells for punishment, sometimes for thirty days or even longer, without exercise, meals being served to them in their cells. There was a constant fight with these men from morning till night to try to keep them under control. After being locked up for thirty days they were interviewed by the officials, and if it was considered wise were again returned to their cells; otherwise they were sent back to work in the shops and if their work was not well done they went to the cells for a longer period.

The officer was just a mere machine under the old system, and if he had any kindly feeling in his heart he was subject to discipline by the prison authorities.

Under the new prison system the men are counted in the morning at six-thirty. Immediately after the count the officers unlock the doors and turn the men over to the officers of the Mutual Welfare League who take them to the shops to wash up for breakfast. After breakfast they have ten minutes' recreation to smoke in the yards before going to the shops to begin their day's work.) Officers of the Mutual Welfare League are in charge during working hours except in a few shops where it is absolutely necessary

to have an officer give out material or keep account of the goods and in the storehouse and shipping departments.

At no time does an officer march with the men; wherever they wish to go they are in charge of a Mutual Welfare League Officer. There is no restriction on their speech other than would be imposed in an ordinary factory.

After dinner the men again have ten minutes in which to smoke, then the whistle blows and they return to the shops and work until four o'clock. The whistle sounds again and the men go to the yard for recreation until five. At five the whistle sounds again and they go to the shops and form in companies to march to the mess-hall for supper. After supper they go to their cells for the count which takes from fifteen to twenty minutes. Then the men who are members of the several classes are let out and go to their classrooms. At eight o'clock all the men who desire may go to the chapel to a lecture, concert or moving-picture show, which generally lasts until about ten o'clock. Then they go to their cells for the night and the prison closes about ten-thirty.

Saturday afternoon is a half-holiday, the prison ball team often playing a visiting team. All kinds of sports are enjoyed, especially swimming in "the pool" where two hundred can swim at one time. They are allowed one hour in the pool so all may have a chance to bathe once during the afternoon and again on Sunday afternoon.

On Sunday morning the men turn out at six-thirty

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and march to the mess-hall for breakfast which lasts until about eight o'clock. All who wish to attend the Catholic service go directly to the chapel, the Catholic service being the first for the day and usually lasting about an hour. The rest of the men may go to the yard during the time of service.

At eight-forty-five the bugle is sounded and those who wish to attend the Protestant service fall in line, under an officer of the Mutual Welfare League, and march to the chapel where the service begins promptly at nine. The third service for the day is the Christian Science. The men are free to attend any one of these services but are not compelled to do so unless they desire.

At the sound of the bugle at twelve the men fall in line, not, as on week days, from the shops, but from their respective galleries. They are marched under Mutual Welfare League officers to the mess-hall and as on week days after dinner they go to the yard for sports until five o'clock. At five o'clock the bugle sounds, and they fall in line for supper. At about seven o'clock the classes begin and are generally followed by some entertainment in the chapel which lasts until ten o'clock.

The men return to their work on Monday morning in a pleasant frame of mind and jump at their work with a will — not with a grouch or in fault-finding mood as under the old system.

It must be understood that during the hours in the dining room not one officer is present, except of course the chef, the men being entirely in charge of officers of the League.

Under the new system the prison officers work only eight hours, instead of working from twelve to fourteen hours as they formerly did. They are divided into three shifts instead of two, and their chief duty is to see that no man goes beyond the boundaries of the prison. The officers who were formerly armed have voluntarily discarded even their clubs and are on very friendly terms with the men. Often now in cases of sickness or trouble the officers take personal charge and see that their prisoners get proper care and in many cases bring delicacies from their own homes for a man in trouble; under the old system an officer would have been discharged for attempting anything like this. His nose was always at the grindstone and if he did not report a prisoner he would be reported himself, and at the end of the day was not human if he was not nervous and a grouch. Now the officer has more time with his family and as his nerves are not constantly on edge he enjoys this time and so does his family.

When first the new system was inaugurated, I had little faith in it, but it has stood the test and I am convinced that the men are better under it, the officers are happier under it, and the officers' families are grateful for it.

CHAPTER VII

INDUSTRIAL TRAINING FOR THE PRISONER

BY ARTHUR D. DEAN, Sc.D.

*Director of Agricultural and Industrial Education, New York State
Department of Education, and Professor of Vocational Education,
Teachers College, Columbia University*

CHAPTER VII

INDUSTRIAL TRAINING FOR THE PRISONER

WHILE I am very glad to contribute a chapter on industrial training for the prisoner, I must ask that the topic assigned be considered in its relationship to the whole question of prison reform. I cannot conceive of a prison system of industrial training which is not a part of the educational system. Furthermore, it is useless to think of the reorganization of prison industries from the standpoint of their training value without taking into consideration the relationship which the educational and vocational work of the prison bears to the whole question of prison ideals and efficiency.

I appreciate that there are many difficulties in establishing a new educational and vocational system in prisons. The clientele, taken as a whole, is not particularly interested either in shop work or book work. Many of the men and women are unskilled, with irregular habits of work, and with a vitality lowered before entering the prison. We know that the incentive for good work is lacking, that men are called away from the shops for considerable periods of time for medical attention, to meet the chaplain, to receive relatives, and for numerous other things which break in upon steady productive employment or upon other activities which may be or might be

educational. We know that men are drafted from one prison to another, that the prison term for some is too short to do effective work, while for others it is so long that the inmates are discouraged or disinclined to profit by useful and productive study or labor.

We know that the productive incentive is not only lacking on the part of the men, but also very often on the part of the prison officials, or at least on the part of the shop foremen. The latter are not in competition with business. The output of the shop is seldom at its peak load. The inmates are, perhaps, not only inclined to lie down on the job, but the prison methods, whether initiated by the prison itself or emanating from some official higher up, are sure to make it quite impossible to conduct the shops on a business basis.

It is perfectly obvious to any one that in a good many prisons there are very few shop activities in which the men are engaged which can be followed after they leave prison. Men are assigned to jobs in a perfectly haphazard manner, sometimes because a particular shop needs some men and not at all because these men and women have chosen the particular work represented by that shop while in prison or will necessarily follow that work after they leave. It is not a bit of an overstatement to say that these people are really forming habits of idleness rather than of work, and when they do form habits of work they are learning under methods and machinery which are often antiquated and produce a low quality of workmanship.

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As I have already said, I appreciate these difficulties and it is fair to ask, for what are these men and women in prison? What purpose has society? Are they there to be punished, exploited, redeemed, or ruined? Are they to become more dependent than ever upon society through so-called reformatory methods which make them more dependent, or are these mentally or morally or vocationally defective people to be redeemed into a state of economic, social, and civic independence? If they are to be punished, I can imagine no worse punishment than to be put to work on a type of work in which one has no interest and in which there is no outlook, and for which one is not fitted. If they are to be exploited, I can suggest no better type of exploitation than the manufacturing of articles for the State to be sold in the open market for State profit, when such articles have absolutely no relationship to the educational, vocational, or reformatory needs of the people who make them. If these imprisoned people are to be ruined, I can think of no better way to destroy a man who enters prison industrially and commercially capable along certain productive lines than to assign him in prison to lines of labor which have no relationship to what he did before he came in or what he can do after he leaves. But if these people are to be redeemed, then we must know and appreciate some aim for prison industry and education. We must be able to adjust the educational and vocational purposes and methods of the new prison to meet the new requirements of prison schools and industries.

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My program, therefore, rests entirely upon the proposition that the educational and vocational system of a prison is but a part of a larger progress for making, through every activity within and without the prison walls, dependent men and women into independent members of society. In other words, the prison system is to be a big educational, social, and industrial enterprise to make physically, mentally, vocationally, and spiritually new men and women. It should be the business of the prison to so organize its work as to make these very dependent people into independent individuals. They, more than any other type, require that every prison activity contribute towards changing them from dependents into independents. It is essential that all their educational work be made more or less directly productive and that all their activity work be made educational. It is expected that all the vocational work be projected into the useful — useful in the development of physical health, of moral character, of intellectual capacity, and of socialized citizenship. It is expected that all productive work will react in the physical, mental, moral, and social development of the prison.

A prison has a greater opportunity in many ways than the public school, for it has twenty-four hours a day program — a program which may be divided up on the basis of five aims. First, the development of vital efficiency. This concerns the physical side of the prisoner and is related to the prison work which is chosen for him or which he chooses in that the labor must be in accord with his strength and with

conditions making for increased health. Second, vocational efficiency along the lines of the industrial, agricultural, commercial, or professional. This will be taken up in detail later. Third, civic efficiency or fellowship, and the very best way to develop this type of efficiency is through some form of self-government. The public schools are finding that they cannot train boys and girls for citizenship by studying dates, reigns of political parties, times and places of battles, or even mere book lessons on civics. The public schools are reaching out to incorporate somehow into their school activities the spirit of self-government. These young people have not been tested in self-government and the time for such testing does not come until they meet the conditions imposed by society and their fellow beings. The prisoners have been tested and have been found wanting, and this want can never be met any more than the public schools can teach through preachments about civic duties and individual rights and community needs. Some good people would impose still more preaching systems on the public school children instead of some system of practical government, and I suppose like-minded persons would advocate lesson leaflets to be distributed to the prisoners on how to be good citizens. But the best way to learn how is to learn to be, and the best way to be, is to have the chance to be, and to have the best chance is to participate in some type of self-government.

Fourth, moral and social service efficiency. The pedagogy which has been given in the preceding para-

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graph applies here equally well. One does not learn how to be good by having some one stand over him with a club. Genuine goodness is not generated in a dark cell. "Do good and make good" is the only way to make goodness. People are never made good any way. They make themselves good, and so I am led right back to the principle of some form of self-government.

Fifth, avocational efficiency, which means the right use of leisure where men get the habit of using their leisure profitably — the habit of reading in the evening, the habit of going to good prison entertainments, the habit of electing whether one wants to stay in his cell and read, or go to a "movie", or go to a class in book work, or to some evening vocational work. In this way prisoners will learn to be masters of their leisure and to choose in one form or another a type of recreation or study, but one can have no choice when he is locked in his cell after the working hours are over. How, by such a system, does society develop initiative and judgment as to the use of one's free time?

I should not speak of these general things which may seem to some to be apart from the title of the chapter except, as I have already implied, that I must think of a prison as being somehow a social, or perhaps a better term would be a civic, unit in itself. It takes in at its back door human and material products and by thoughts, manipulations, and expressions of each makes them both over for larger social and economic needs. The wood comes in as a raw product; it goes out as an office desk.

The prisoner comes in as a knotty problem ; he goes out as a useful and productive citizen. Now the prison, like a community, has its civic work to be performed. It has people to be fed, clothed, housed, instructed, governed, and guided. Each person in a city finds opportunity, or ought to be able to find it, to express himself and to contribute to the well-being and conduct of the community. Some hold positions of responsibility and direction. Others are directed in a narrow field of work. Of course there is some injustice in the way the cities are governed. There are individual failings and indifferent rewards, but taken as a whole, is there not a recognition of service and opportunity for advancement and free choice of occupation and the normal finding of vocational levels? If the community offers this freedom, why should not a prison, which is to fit people for this freedom? If a community takes into account the vital, normal, social, industrial, vocational, and avocational efficiency of its citizens and considers these elements collectively, why should not a prison system think of these types of efficiency collectively and not as separate and independent or neglected units?

We hear a good deal these days about the Gary plan in the public schools, that is, the system used in Gary of dividing the activities of the school into three heads: work, play, and study. I am thinking that the prison system might adopt the same spirit of a fair division of the activities into: first, useful, profitable, and productive labor; second, health-giving, morally uplifting, and socially serviceable recreation;

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and third, book work related to the activity work in the institution where correlation will be profitable, or, book work dealing with the primary needs of the illiterate prisoner at one extreme, or with the intellectual desires of men already intellectually trained, at the other.) These three divisions of time would vary with the seasons and with the weather conditions. They would recognize holidays, days of religious observances, the seasons, and so on. But generally speaking there would be some set division of time for the activities under each head as are considered in any well developed educational institution, and I take it, (that is primarily what a prison is: a ✓ great educational enterprise.

Nothing in the prison causes me more concern than that there seems to be such a large number of men and women employed in what are commonly called the maintenance occupations — men and women who are cleaning, scrubbing, washing, cooking, running errands, doing chores, and so on. Unquestionably most of this work, as it is arranged, at least, does not fit a man or woman for employment after release. I appreciate that it is necessary to carry on these maintenance occupations and that there is need of food to be cooked, halls to be cleaned, and dishes to be washed, but I insist that this sort of work is to be done as quickly and effectively as possible, not so much as tasks, but as duties necessary to the social welfare of the institution. There is little or no educational or vocational value in such work, but it can be made to have its social value. We must remember that there is a vast difference

between being a washer of dishes or a peeler of potatoes, and being trained as an expert cook. There is a large difference between service as a waitress at a prison dining table and being trained at expert service at table work in a private family. I would separate most definitely service in necessary institutional duties from training for service in vocational life outside of the prison. There is a legitimate field for the ordinary institutional duties when properly handled, but this field is clearly outside that of vocational training. For example, take a woman's prison. To train these women to be waitresses, laundresses, cooks, mothers' helpers, child carers, junior nurses, second maids, chambermaids, means something definite, purposeful, instructional, and intensive in doing through institutional activity the type of work demanded by the outside world. If a woman prisoner is to take care of some young children belonging to an officer, the work may have social content. If she is trained to take care of these children, her work may have educational content. If she does this work with the idea and is taught with the idea that she is to go out into the world as a nurse girl, then it has vocational content.

There is a big difference for a male prisoner between cleaning out the cow barn and learning to be a dairyman, or sweeping out a printing room as compared to being a printer's apprentice; between cobbling institutional shoes and working in a shoe factory on automatic machinery; between being ordered to clean up a yard and learning to become a gardener; between caning chairs, weaving rugs, making willow

baskets, and learning a profitable, useful, and decent trade. Some persons emphasize the importance of agriculture for prisoners but I would have them go into it with some definite vocational and educational aim. To have them fuss around a garden or be domineered over in the garden on about the same basis as they would cobble shoes or make cheap shirts is unsocial, uneducational, and nonvocational. To have persons do garden work with the same amount of thought put into it and the same quality of teaching which they would get in a classroom if they were studying from books, would be to make their garden work most decidedly educational and mentally developing, but this sort of garden work might be educational and social without being vocational, and here is my point. If we expect to make these prisoners into farmers, we must get them to become farm-minded so that they will stay on the farm when they are placed there. To become farm-minded they must have definite farm work, or rather I should say, farm training. Full opportunity must be given them to discover whether or not they are farm-minded, and then when they are placed on a farm they will make good not only because they have been trained, but because, through a system, they have been selected and placed as well as trained.

I appreciate that it is necessary to carry on maintenance occupations, but I believe they should be thought of along two lines: first, that a good deal of this work should be done by men and women who show no skill nor any desire to be skilled; and second, that every member of the prison community should

make a small contribution, no matter what other line of activity he is pursuing, in furthering some of the necessary maintenance work of the prison. I understand that a very large percentage — abnormally large — of the inmates of prisons are engaged in menial tasks incident to maintenance, and yet we are thinking that these men are being trained for the workaday world and that they learn their place in citizenship. But what a poor sort of a community it would be that used the full time of more than half of its inhabitants in the menial tasks incident to the maintenance of the civic plant.

Broadly speaking, the maintenance activities of the prison come under three heads: first, the social and necessary occupations such as dish-washing, cleaning, etc. They have no vocational value and are to be disposed of as quickly and effectively as possible. Second, the educational activities of cooking, caring for heating plant, expert janitorial service, and so on, which may have thinking and training values and may be so taught as to have intellectual development and also an educational value. Third, those activities which are directly vocational and which may be taught with this end in view: such occupations as plumbing, tinsmithing, agriculture, painting, and so on.

Perhaps agriculture and farm work offer a good illustration of the foregoing. I can think of men pulling weeds, hoeing corn, and digging potatoes as a social service for the prison. This work would be a physical benefit to many inmates and these activities are necessary to maintain operations.

But if some of the men who are mentally competent were taught something of soils, fertilizers, plant life, rotation of crops, and so on, then one can see that they would receive intellectual training. And then if these men, or some of them at least, were taught these things and did these things in order that they might become farmers and were carefully instructed and inspired that they would become farm-minded, and were placed, after the expiration of their sentences, upon farms and followed up in their work, then one sees that the third type of training would be vocational. I should not for a moment think that I were training farmers by having inmates hoe corn or dig potatoes, and neither should I think I had made a farmer by teaching a man farming when I had not during the process made him so farm-minded that he would stay on the farm after a position had been obtained there for him.

Prisoners must be paid for their work. Very few men, and I suppose, strictly speaking, no man, works without some strong incentive ranging from desire for food to desire to do unselfish deeds. A prisoner differs little in this respect from the free laborer. Many prisoners have a strong feeling of antagonism toward the State while working in the shops, and they vent this feeling upon the work which they are doing. I recall the first office desk which was given me when I entered on a State position. It was made in one of the prisons of the State, and I was reminded every time I attempted to raise the roll top or open a drawer, that the particular prisoner or prisoners who worked on that

article of the State must certainly have had a grouch. And somehow, I don't know that I exactly blame them. There seem to be only about two ways to overcome such poor workmanship: one is by punishing a man for the poor work, and the other is by rewarding him for good work. The slave days of the old South are like the modern days in some of the old prisons. Booker T. Washington in his book "Working with the Hands" says of the negro: "The race had been worked in slavery and the great lesson which the race needed to learn in freedom was to work. As a slave the negro was worked. As a freeman he must learn to work." Being worked means degradation — working means civilization. If labor goes hand in hand with opportunity then labor has a purpose. When it is accompanied by denial of opportunity its effect is limiting if not actually crushing. As I have said, there must be some incentive. This incentive may come from time off, or token money, or real money. It is very likely that it is inadvisable to give the prisoner actual money, as the opportunities afforded for corrupt use are many. It is clearly evident that the payment of some sort of wage, either in time off or token money, will result in profit to the State in all the productive work in that the prisoners will be exerting energy for the State instead of being against it. From the standpoint of the prisoner, some sort of rewarding system will give him responsibility and practice in his prison world with conditions with which he will deal on the outside. It is clearly evident that men can quickly recognize their vocational status by the

pay envelope, and if privileges like tobacco, entertainments, buying things on the outside, special dinners, etc. depend upon the amount of token money which these men have and the latter in turn depends upon the type of work and the amount of work which they do, it is evident that these men would see the relationship between personal cause and economic effect.

Whatever we may think of the George Junior Republic idea as a whole, Mr. George's idea of "Nothing without Labor" can never fail to impress us. The productive end of the prison will produce neither men nor things in any efficient or effective way until there is some way of recognizing efficiency and some way of letting men see themselves that unskilled work, loitering, and loafing bring their just retribution; and that ability to do skilled work, responsiveness to demands made upon them, bring their just rewards. I would go so far as to charge up to the prisoner the cost of his board, his cell, the salaries of the guards required to watch over him. I would pay him in token money in proportion to the quality and quantity of his work. If he did skilled work and did it well and if the prison were disposing of this product and getting good value for his work, I would pay him, and I would pay him an amount such that he could live in the Waldorf Astoria end of the prison and have privileges inside the prison walls in accord with the kind of work that he does and the kind of man that he is. The State is getting something from this sort of man and it is quite reasonable that it give something back to him,

that he in turn may spend it in the prison, save it up for use outside or send it, as he would be expected to, to his dependents if he has any, on the outside. On the other hand, if a man had to be watched constantly, which meant a large expense for guarding, if he were only capable or only willing to do low-grade work, then he would have the privileges of the Bowery lodge and could eat at the *café des enfants* end of the establishment. I have no interest in or any understanding of any other system of prison industry unless, of course, one is thinking of developing the type of industry which is frankly punitive, slavish, and definitely planned to economically and socially ruin every prisoner it touches.

Men should be assigned to occupations for which they are fitted. If they are unfitted for the skilled, they should be assigned to the unskilled, and as fast as they desire to work into the skilled, they should be given opportunities. And in choosing a skilled occupation the educational director should assist by a careful study of the prisoner's ability, previous education, previous vocation, and his present motives and interests. There is practically no vocational or educational justification for male prisoners being assigned to knit, mat, brush, and broom shops. Nearly all knitting work is done by women, and there is practically no labor market for mat workers. The same is true of the brush industry, for in the outside world all brush making is done by machinery. The broom business in institutions is very properly in the hands of those who are unfortunately blind. It is the chief outlet for the hands that see and the

eyes that are dim. The only justification for the above mentioned industries is that they may make money for the State and may punish the inmates. They are frankly punitive industries and bear absolutely no relationship to the vocational or educational. Of course some inmates who have no particular intelligence, being practically defective, might be assigned to this work and paid accordingly, and the privileges which they would receive would be in accordance with the kind of work they were doing. It would not be very long, if a man were bright, before he would catch the incentive of the workaday world and ask to be transferred to the vocational training department where he would learn a trade which would be worth while, or to some productive activity of a higher order which would pay him better. If it is discovered through psychiatric tests that a man is really defective, then it would be unfair to assign him for a long time to the type of work the financial rewards of which kept him down in the Bowery end of the prison. A mental defective rather likes routine work. He becomes quite adept in automatic motions, and it is very likely that the quantity of his work would be such that he would receive far more remuneration than those who were working alongside of him who were on a punitive basis, so that he would not be obliged to live on a low economic scale.

But I am expected to give more specific details. This I am glad to do, although I believe that vocational and educational work in prisons is more in need of philosophy of purpose and method at the

present time than it is of attention to specific details, especially when the material in this chapter is expected to be applicable to any State and any type of correctional institution. This forbids any very specific statements. I suggest, however, for consideration the following :

First. There must be some system of administering correctional institutions to bring to pass the principles already mentioned. There is need of a board of standardization and distribution of goods to be manufactured in the various correctional institutions. There should be a State superintendent of industries as the executive officer of this board.

Second. The board should find a market for institutional goods. This market will be other public institutions such as schools, asylums, poorhouses, and so on. The State should require the purchase of these goods and there will be little difficulty in such purchasing if the goods are excellent in quality and reasonable in price. But no one wants to be required to purchase inferior goods out of the meager appropriations usually allotted to schools, asylums, and so on when they can obtain better goods in the open market.

Third. The board of standardization must create a market by manufacturing some products which are not sold in the open market. For example, physical training in the public schools has taken an immense forward step within the last year. Thousands of pieces of outdoor apparatus simple and inexpensive must be purchased. This affords excellent opportunity for some correctional institution to

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make this apparatus from original designs. Or again, the country schools are beginning to put in simple domestic science equipments. Here is splendid opportunity for some enterprising superintendent of prison industry to devise an inexpensive equipment consisting of a demonstration table, alcohol stove, tinware, and so on; something which could be sold to the schools at an expense ranging from twenty-five to fifty dollars.

Fourth. It must be kept in mind that the industries must be of such a nature that the prisoner on release will be fitted for some useful line of occupation, and the industries undertaken must be of such a nature that the State will derive financial advantage from their pursuit.

Fifth. The State must develop some working plan of coördination and coöperation of all the industrial work of charitable and correctional institutions financed in whole or in part by public money. For example, the schools for the blind should have the monopoly of brush and broom making. A prison located in the dairying district should have the monopoly of producing condensed milk, cheese, and so on. An institution located near a large city would naturally have a good portion of its vocational equipment devoted to sheet metal work, machine shop practice, plumbing, and so on.

Sixth. Each institution must have an educational director or a supervisor of shop work. Some institutions require two officials, but all institutions having only one will require that the one employed combines the industrial and educational spirit of prison

work. If the prison has two officials who are directly concerned with the educational and vocational work, one must be of the manufacturing, executive type — an organizer of men. The other associated with him and of equal rank and working directly with him should be an educational director who knows educational and vocational needs and who knows the opportunities open to men and women after they leave prison; who knows how to train inmates for these opportunities and who has ability in analyzing the vocational and educational needs of individual prisoners, and who can follow up their progress in the various shops.

Seventh. The educational and vocational work in institutions must include the principle of vocational guidance. Men and women must be studied with a view of determining the intellectual and vocational interests and needs. The educational and vocational work must be adjusted to meet these needs. This means mental and physical examination at entrance and continued examinations from time to time. It means the segregation of mental defectives. Efficiency of shop plants would increase immeasurably thereby.

Eighth. It should be a condition of parole that no prisoner may be discharged until he can read, write, and speak the English language, except for reasons of physical or mental defect. Perhaps the only feature of educational work which should be made absolutely compulsory is that of removing illiteracy, and no inmate should be allowed to escape the first obligations of citizenship. Attend-

ance upon classes in reading, writing, and speaking the English language should be made compulsory for those who are illiterate. They might receive "compensation" as those in productive labor and there might also be voluntary class work in hygiene, civics, history, and arithmetic. There may even be classes in economics, political science, elementary engineering, stenography, typewriting, telegraphy, and such work and any other subject where at least five inmates are willing to attend the full number of evening classes. Whether these classes should be held in the daytime or evening or both is not discussed here.

Ninth. The trade work in institutions must not be entered into until there is an understanding with organized labor. This principle has a deep significance especially in some trades. For example, in printing. In New York State it would be practically impossible for a man to secure work as a printer if he had been trained in a prison trade school of printing unless the Union desired to or were willing to admit him. I do not anticipate very much difficulty in this matter provided those interested in prison reform work on the principle that they must coöperate with organized labor and have the latter understand the economic and social advantages of the new vocational educational movement.

Tenth. The State administration in charge of charitable and correctional institutions should cooperate with other State boards or commissions. The department of agriculture, for example, can assist materially with suggestions and expert assistance in matters agricultural. The State superin-

tendent of public instruction through his association can give direct help in the educational work. The United States Government and a number of the States employ specialists in vocational instruction whose services may be requisitioned.

Eleventh. Suggestions as to the occupations which may be represented in correctional institutions follow. Obviously one must keep in mind that these suggestions are very dependent upon location and type of institution.

(A) AGRICULTURE. Farm enterprise can play a large part in a scheme of rehabilitation of prisoners. There is a marked moral and physical reaction from intimate relationships with growing objects and responsibility assumed in their care. Furthermore, the food supply of the institutional table from the farm is naturally superior to that purchased. In obtaining a site for an institution, the State should take into consideration the conditions of the soil, drainage, and location. There can be an exchange of products between the various State institutions. For example, butter, cheese, condensed milk, and so on from an institution located in a dairy district could be exchanged for products of an institution which is more favorably located for the growing of fruits and the specialty of which would be canned and preserved goods. Plants and flowers might be successfully put on the market from an institution located near a city and where the soil was such as to produce these products.

Too much cheap meat is eaten by the average prisoner. Unless these men perform more manual labor,

it would be better for an institution to discover grains and vegetables which would furnish the same nutriment. These would be very nutritious and less expensive.

Again, every State has a large amount of land which is practically valueless. It either needs reforestation or drainage or scientific cultivation for a number of years. Here alone is a never ceasing occupation for institutions to undertake.

(B) PRINTING AND PUBLISHING. Annual reports of the various State departments and commissions, the session laws, letterheads, printed and embossed, lithographed letters, school certificates, and so on furnish an ample field.

(C) SCHOOL AND OFFICE FURNITURE. The quantity of goods used by State, county, and city institutions and by the public schools in the lines of wood and metal furniture is very large. Manual training benches, cooking tables, drawing equipments, school desks, physical apparatus, filing cabinets, lockers, and a score of other articles might be made with profit to the inmates and to the State. But the institutions will need more adequate machinery to handle a well turned out product.

(D) SHEET METAL. Cornices, metal ceilings, ventilators, waste cans, automobile license signs, utensils, and other products in the line of sheet metal wares will find a steady outlet and the making of these products will provide excellent trade instruction.

(E) KNIT GOODS. Hosiery, underwear, sweaters, gloves, caps, scarfs, and any other products of knit-

ting machines are admirable lines of work for useful and profitable employment for female inmates. It would make an angel weep to visit some institutions and see men doing this sort of work under the name of vocational training.

(F) **BOOTS, SHOES, AND SLIPPERS.** These articles are much needed. If making brooms is a blind man's job and making overalls and knit goods is a woman's job, then the present way of making shoes in a State prison is a grandfather's job. The machinery used and methods employed are antiquated. Now if the institutions that claim to make shoes are doing it for the sake of making shoes, then all one has to do is to change the label over the door and say: "This is the place where we make poor shoes by ancient processes and do all we can to unfit a man to earn a living through shoe manufacturing after he leaves this institution." The shoe industry offers a great opportunity for trade education in institutions if the shops are conducted on a plan of organization and equipment and method similar to that provided on the outside.

(G) **MECHANICAL AND SKILLED TRADES.** Plumbing, machine shop practice, electrical work, automobile repairing, foundry work, painting and decorating, building construction, steam fitting, boiler and engine practice are useful and profitable trades. Obviously the equipment for some of these lines of work is expensive. It is equally true that not every institution could have all these lines, and some located in the country would have practically none of them. Generally speaking, which is all one can

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do if he is thinking of the country as a whole, it would be well to have one State institution so equipped for the teaching of these trades that it could do considerable of the repair work for all the institutions.

(H) **BRICK, STONE, AND CEMENT WORK.** Artificial stone, brick for State roads, cement roads, and the manufacture of brick for building offer a field for effort for an institution located where the raw material may be easily obtained and where there is a market for the output.

(I) **LAUNDRY WORK.** Of course every institution has its laundry. A good many of them claim to be training laundry workers. It is safe to say that no laundrymen are made through washing overalls and prisoners' shirts. The skill and experience obtained here can hardly be transferred to the ironing of a lady's waist or a dress skirt in an outside laundry. If laundry workers are to be trained, they must have material from the outside on which to work, as well as the ordinary washing and ironing connected with the average institution.

(J) **BRUSHES AND BROOMS.** Absolute elimination from all institutions except those for the blind. These industries might have a place in the solitary confinement cell. They would serve as vocational punishment.

(K) **BREAD AND OTHER BAKERY PRODUCTS.** Ice manufacture and other occupations most directly concerned with the maintenance of the institution need no elaboration beyond what has already been given in the text preceding the enumerated articles.

CHAPTER VIII
THE PRISONER IN THE ROAD CAMP

BY CHARLES HENRY DAVIS
President, National Highways Association

CHAPTER VIII

THE PRISONER IN THE ROAD CAMP

“TRUTH FOR AUTHORITY, NOT AUTHORITY FOR TRUTH”

I do not like the title of my chapter, nor its limitations, but having enlisted for the war will do the part assigned by those who, knowing more, are leading us and our brothers to better days. In doing so, however, I shall not limit this chapter to the chapter title. The whole problem is too broad, too interlaced for that. In fact too new — one might say — at least newly thought about by thoughtful people.

There is both everything and nothing in a name — there is the very beginning of our trouble in getting a really good start. How can we get rid of words like “crime”, “convict”, “prisoner”, “jail”, “cells”, “detention camps”? In one breath we admit that fully three fourths of our brothers are not wholly responsible, and in the very next treat them as though they were. Even “Honor Men” does not leave quite the right feeling. I emphasize the importance of somehow changing present designations to kindlier ones that may point to brighter, better days instead of to the evil ones of the past. It will take skill and thought to do it in manly fashion —

but do it, and we will have a real foundation to build upon. Give a dog a bad name and it is fastened to him. But give him a good one and he will keep that as well. And we want our brothers to keep their good names.

But there is even more in the spirit of our surroundings, our environments, as the scientists say. Preaching and telling by word of mouth will go for nought if the precept, the example, is lacking. How can one expect improvement within a jail or the cell within the jail itself? We shall not rightly attack the problem until we tear down jails and destroy their cells. Such pest-holes destroy our brothers. Their retention will make all our other efforts of no avail.

We should remember that our brothers have only made MISTAKES like other children before them, like ourselves, and like those who come next after us and them. They and we are, after all, but children although grown in stature. While important, temporarily, to apply scientific corrective methods, why not go farther back and stop it all at the source? People of themselves are not criminal, feeble-minded, imbecile. Society is responsible in the first place for their making, so why does not society stop such "products"? Why shift the responsibility upon the innocent? Society has, for centuries, manufactured more criminals than human nature of its own accord produces. The more fortunate but not necessarily less criminal, have almost universally cruelly punished those less fortunate brothers caught in their so-called crimes. Correction, instruction, forgiveness, kindness, have played

but a small part in dealing with the "criminal" or "convict." Would that we might call him by a kindlier name! For many of us now think and talk of him as of a different breed, forgetting that he is, after all, a man. We cry out against slavery, yet legalize it for tens of thousands. We scorn revenge, yet mete out vengeance in the name of the law. We remove from society offenders against society and forcibly detain them for years in surroundings as much unlike real society as possible. We then once more thrust them upon society, untaught, revengeful, weak, broken in mind and body, and wonder why they fall again! Why should they not? Has not society done its utmost to prevent their rise? And yet society places the responsibility upon these poor unfortunate beings! Most of them are mentally deficient and should have our care and help — not our contempt. Many of them have been sorely tempted, without ability to run from temptation. And all of us must run! Some have led honorable and useful lives and would continue to do so did society have the forbearance and forgiveness of the parent toward the child. And society should have such forgiveness, and thus restore men to society and not brand them as criminals. Our modern prisons are barbaric. They typify the mediæval prisons so loathsome to our imagination, and yet we call them modern. They are not. They still hold men in abject slavery, in idleness worse than death; without sun — sometimes without light; with foul air and fouler companions. Does this treatment, even of the convict, produce repentance?

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No; a thousand times no! Revenge, insanity, more crime are the inevitable results.

As in many other activities, our laws and their administration are fifty years behind the times. Once in prison how many of us could resist the debauching influences? How many of us could resist the degrading example of those associates more steeped in crime and hardened by their previous contact with still earlier criminals? How many of us could return to the life outside without a feeling of bitterness or resentment against our whole social structure? We have abolished negro slavery — a paradise to that of criminal slavery. We maintain institutions little better than the torture chambers of ancient times. They are not designed for reform, tuition, enlightenment. They offer little incentive to right living, high ideals. They are not places where erring humanity may be schooled and trained to become good citizens. They are more fit to drag and trample down into the mire the unfortunates sent there for their "first offense." There even plant life does not exist. The grass, the plants, the flowers, the trees do not grow within their yards. How much less does man! Could there be greater shame to our nation than thus to cling to the ancient custom of depriving men of their freedom, shutting them up within four walls, leaving them to their fate? "Men are but children of a larger growth." But do we treat our children in this wise? Do we not believe in pointing out to them and making attractive and possible the road to virtue? Do we rather enslave and chastise them unmercifully for having failed to

find it out for themselves? We used to, when parents held the lives of their children in their hands. The State now so holds the lives of its citizens. When shall we take such power away? In our criminal procedure we now have the spirit of punishment, cruelty, unkindness, physical force, slavery, confinement, isolation, darkness, silence, and all the resultant evils thereof — resistance, revenge, sullenness, depravity, hopelessness, insanity.

We should turn on the light; we should give men the sunshine, the free air and fields of the country. We should have and thus give hope, faith, help. We should correct, not punish. We should be kind and fair, and our "pals" will respond most wonderfully. Children are not controlled by physical force. Deliberate, low-voiced, firm kindness and "square" dealing gain their confidence. So it is with their larger brothers. What results to be attained by such a change — change in our acknowledgment of the wrongs we have done to the convict! We have been too long blind to this wrong thinking and doing. We have had too much pride, too little charity. We have admired too long the public prosecutor. We have delayed too long the coming of the public defender.

How can we do all this? We must do something with those who violate the rules. Yes! But that something should be to help them not to break the rules again. Temporary exile into a temporary society as nearly as possible like normal society on the outside would seem the best solution. They would thus be learning to play the game according

to the rules. Responsibility during their temporary exile would increase this desire to play so well, so fairly, that they could go back from whence they came. To do this we must get them "Back to the Land." But how? One way is through the building of good roads, although some prefer railroading!

To have *good roads everywhere* throughout these United States will mean more to this nation than any other development since the Declaration of Independence. During all the ages it has been of primary importance to provide means of intercommunication. People, like water, must move or stagnate. They must run and play like the brook itself or become sluggish and dull—to themselves as well as to others. Of the seven modes of intercommunication—water, roads, post, railroad, telegraph, telephone, and wireless—only one, roads, is free to all the public of the earth. Roads are the most universally used and therefore the most beneficial to the greatest number of people. The importance of good roads everywhere is paramount—their benefits are all-embracing.

There are eighteen million children who endeavor to attend school. There are over thirty million who should attend school. Why don't they? Largely because during much of the school term a considerable part of the two million miles of our roads is impassable. This is shown by the fact that only nine tenths of one per cent (0.9%) of the urban white population of the United States of native parentage is illiterate, while rural illiteracy is six hundred per cent greater in the same class of inhabit-

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ants. How can we have or get good schools in the rural districts if we have not the good roads to reach them at all times and in all seasons? If we do not have good schools, and illiteracy results, then we help, to the greatest possible extent, the growth of our criminal classes.

The relation of good and bad roads to illiteracy and thus to crime is indicated by the accompanying table :

	NATIVE WHITE OF NATIVE PARENTAGE TOTAL POPULATION, 1910	PER CENT IM- PROVED ROADS, 1909	PER CENT OF ILLITER- ATE NATIVE WHITES OF NATIVE PARENTAGE, 1910		
			Total	Urban	Rural
NEW ENGLAND		22.2	0.7	0.5	1.2
Maine, New Hamp- shire,	2,135,801				
Massachusetts, Rhode Island, Connecticut.	6,552,681				
SOUTH ATLANTIC		6.7	8.0	2.2	9.8
Delaware, Maryland, Virginia, West Vir- ginia, North Carolina, South Carolina, Georgia, Florida.	5,397,864				
	12,194,895				
PACIFIC		14.2	0.4	0.3	0.6
Washington, Oregon, California.	1,684,658				
	4,192,304				
WEST SOUTH CENTRAL		2.6	5.6	1.4	6.8
Arkansas, Louisiana, Oklahoma, Texas.	4,101,510				
	8,784,534				

This table does not of course include foreign born, native born of foreign parentage, or negroes, all of whom are excluded for obvious reasons. Illiteracy is eleven times greater in the South Atlantic States than in New England, while the percentage of im-

proved roads (such as they are) is less than one third. Similar figures for the Pacific and West South Central are: fourteen times greater illiteracy, while the percentage of improved roads is less than one fifth as much. The excess of illiteracy over urban New England is only one hundred and forty per cent, while in the South Atlantic States this excess is nearly four hundred per cent, due to the lower percentage of improved roads. This difference is slightly greater in comparing the other two groups in the table.

The children of to-day are the electors, the representatives, the senators, the judges, one of them the President of to-morrow. The population is increasing by leaps and bounds. If education means liberty, and if poor roads mean illiteracy, or worse, have we a right not to build good roads, even if they will not pay for themselves well within the generation which builds them?

To-day we have preventive medicine. Instead of waiting to cure people of disease, we are bending every effort to prevent disease. Why not profit thereby? Crime is a kind of disease. Why not do those things which will prevent crime? Idleness more than any other one thing produces moral deterioration and crime. The building of *good roads everywhere* by the nation, the State, the town, will give constant employment to the army of unemployed. This will tend to prevent crime if we apply it rightly.

What better thing than to employ those temporarily withdrawn from our society in the building

of *good roads everywhere*? It will give brawn, brain, and heart to those most needing them. It will give freedom of mind and body. It will give them inspiration, hope. Tear down our prison walls, and rear no more, for they are festering places for our fellow beings. Let us no longer go back on those of our kind! Let us rather, from now on, give our "pals" a "square deal"! We can be sure they will answer in kind!

EDITOR'S NOTE:—The methods of organizing and operating convict road camps are fully discussed in the following theses prepared under the joint direction of the National Committee on Prisons and Prison Labor and the Graduate Department of Highway Engineering at Columbia University: "The Utilization of Convict Labor in Highway Construction in the North", by Sydney Wilmot (published in the Proceedings of the Academy of Political Science, January, 1914); "The Utilization of Convict Labor in Highway Construction in the South", by James Wilmot; "Convict Road Work for Misdemeanant Prisoners", by James L. Stamford; also in Bulletin No. 414 of the United States Department of Agriculture, "Convict Labor for Road Work."

CHAPTER IX

THE UNION MAN AND THE PRISONER

BY COLLIS LOVELY

Vice President, International Boot and Shoe Workers' Union

CHAPTER IX

THE UNION MAN AND THE PRISONER

THE attitude of the union man towards the worker in prison has been misunderstood, misrepresented, and misinterpreted to such an extent that it seems advisable to sketch its development in order to point the determining factor — active opposition to the exploitation of the prisoner in defiance of his rights and those of the public.

The type of prison which we have to-day was devised by the good Quakers of Pennsylvania at the close of the Revolutionary War. Solitary confinement in a cell with time to meditate and pray was the means, they believed, to overcome the horrors of herding men, women, and children in filthy prison pens as depicted by John Howard and Elizabeth Fry. The Pennsylvania system, as it came to be known, was taken over by New York State in 1796 when Newgate Prison was built in New York City.¹ Auburn Prison was built some years later, the Pennsylvania plan being modified by the creation of workshops where the prisoners could work together, returning to solitude in their cells when working hours were over. Sing Sing, built in 1827, followed the Auburn plan, and since that time practically

¹ Charles Richmond Henderson, "Modern Prison Systems."

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all the Northern States and a goodly number in the South have built one or more of these bastile prisons and the factory work has become a vital part of the prison system.

The New York law of 1796 authorized the inspectors of State prisons to employ the prisoners in such a manner as they deemed best and "accredit them for their labor as they shall deem just and right."¹

The words "just and right" in the law are a mockery for, even in those early days, the labor of the prisoner was exploited and the products of his labor placed in unfair competition with those of the free working man. Efforts to restrict the evil effects of this unfair competition appear in the New York Statutes in 1801 when provision was made that boots and shoes made by convicts should be branded "prison made."²

Branding was the earliest mode of protection and was followed by such schemes as limiting the number of prisoners employed in one industry, instanced by the New York legislation of 1804, which prohibited the employment of more than one eighth of the prisoners in the business of shoe-making; this one eighth not to include women and men who had formerly learned the trade.

A further effort to restrain the unfair competition would seem to have inspired the legislation of 1817, restricting the purchase by the State of any materials "to be wrought or worked up for sale by the convicts

¹ C. Z. Lincoln. "Constitutional History of New York State", Vol. III, pp. 249, 252.

² C. Z. Lincoln. "Constitutional History of New York State", Vol. III, p. 249.

confined in the State Prison on account of the State, but to employ them solely in manufacturing and making up such materials as may be brought to the prison by or for individuals or companies to whom such materials may belong to be manufactured at fixed prices for the labor bestowed upon them, to be paid by the owner of the goods to the agent of the prison for the use of the State.”¹

Further consideration would point to this as an insidious creeping in of the Contract System rather than a means of protecting free workers. The Contract System, which Doctor Whitin discusses in detail in “Penal Servitude”,² was firmly established in New York State in 1828 when the inspectors of the prisons were authorized to make contracts from time to time for the labor of the convicts “with such persons and upon such terms as may be most beneficial to the State.”³ The inspectors were also instructed to defray all the expenses of the prisons by the labor of the prisoners. In brief, it was ordained that the prisons should be self-supporting without any consideration as to the effect on the prison workmen or the laborers outside the prison.

The Contract System was sooner or later adopted in every bastille prison, the alternative when there were no bastilles being the lease system which Doctor Lucile Eaves has described as it existed in California prior to the erection of San Quentin Prison :

¹ C. Z. Lincoln. “Constitutional History of New York State”, Vol. III, p. 249.

² E. Stagg Whitin. “Penal Servitude.” C. 3-5.

³ C. Z. Lincoln. “Constitutional History of New York State”, Vol. III, p. 256.

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"The first plan adopted for the regulation of the State Prison," Doctor Eaves states, "had nothing to recommend it but its cheapness. The whole responsibility of caring for the prisoners and finding them employment was turned over to the lessees. Two men undertook to guard and maintain the convicts of the State without other compensation than that which they hoped to take from their labor. As might be expected this plan under which the State sought to shirk its responsibilities for the management of the State prison worked very badly — while the prison inspectors were not explicit in their report of conditions, the distressing details which must have called forth their general remarks are easily imagined. They declared the State Prison of California, as it now exists, is no paradise for scoundrels. It is a real penitentiary — a place of suffering and expiation — of these there is abundance, with privations and corporal punishment."¹

These labor systems, both contract and lease, were brutal and degrading to the prisoner, the contractor or lessee seeking only the greatest pecuniary profit from his undertaking and caring nothing for the welfare of the inmates.

Their effect outside the prison was equally disastrous. Employers in similar lines of industry were placed at a disadvantage, not so much because of the quantity produced by the prisons as because the contractors were able to circularize the market at a low figure, setting the selling price of the product so low that even if it did not entirely ruin the employer of free labor it had a depressing effect which bore

¹ Lucile Eaves. "California Labor Legislation" (University of California Publications in Economics), Vol. II, p. 353.

down upon the wages of the free working man. In several instances the prison contractors concentrated upon one line of industry with the result that that industry was destroyed as a free industry. Samuel Gompers frequently refers to the time in New York State when the stove molders who were not serving a term in prison and working at their trade there were walking the streets in idleness.¹

The mechanics of the State of New York were active against the prison competition as early as 1831 when protest was made to the legislature against the suffering endured by outside working men because of the marble cutting and iron industries in the prison.²

The history of the labor movement in the different States disclosed a similar struggle against the unfair competition resulting from the labor of the prisoner.

Connecticut, Indiana, Maine, Maryland, Massachusetts, and New York prohibit the manufacture of certain articles in the prison. Massachusetts, Minnesota, Pennsylvania, and Ohio limited the number of convicts in any one line of industry. Illinois, Indiana, and Pennsylvania forbade the use of machinery in the prison.³

These efforts were fruitless, for if the prison output in any line of industry were checked in one State, it was sure to increase in another.

The organization of the Knights of Labor in 1869 made possible national concerted action against the

¹ Address before the Executive Committee of the Mutual Welfare League, Sing Sing Prison, July 29, 1916.

² C. Z. Lincoln. "Constitutional History of New York State", Vol. III, p. 257.

³ E. Stagg Whitin. "The Caged Man", p. 40.

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pernicious Contract System. The first platform of the Knights contains the clause :

“Resolved that we demand the abolishment of the system of contract labor in our prisons and penitentiaries and that the labor performed by convicts shall be that which will least conflict with honest industry outside.”¹

The chief evidence of the activity of the Knights is found in the enactment of legislation, requiring that prison-made goods be branded “Prison-made” or a license required for their sale. At the present time such laws are on the statute books of New York and some twelve other States, but have failed to meet the situation in that they are impossible of enforcement, having been declared unconstitutional whenever tested by the courts.²

The first suggestion that this difficulty should be overcome by federal legislation was made in 1886 by the National Anti-Contract Association, an association organized to protect the market by curtailing the contractor’s ability to sell his goods.³

The proposal made by the Anti-Contract Association was indorsed by the Industrial Commission of 1900 which states that “it seems clear that Congress should legislate to prevent the importation and sale of convict-made goods from one state into another without the consent of the state into which the goods are imported or where they are sold.”⁴

¹ Carroll D. Wright, “Historical Sketch of the Knights of Labor.”

² 157 N. Y. 1, *People v. Hawkins*; see also Bulletin New York State Department of Labor, March, 1910, p. 58.

³ E. Stagg Whitin, “Penal Servitude”, p. 92.

⁴ Report of the Industrial Commission on Labor Legislation, Vol. 5, p. 6.

Through the efforts of organized labor, a bill was drafted embodying this thought and introduced and reintroduced into Congress. Several times it has passed the House and in 1914 was favorably reported by the Senate Committee on Interstate Commerce. The prison contractors and wardens have persistently opposed the measure, the methods to which they resorted being exposed in the report made by the Maryland Penal Penitentiary Commission in 1913 to the Honorable Phillips L. Goldsborough, Governor of Maryland.¹

The attitude of the present administration would point to favorable action towards the measure should it once succeed in passing Congress,² and that its passage would be effective in overcoming the evils of the Contract System is evidenced by the fact that many contracts provide that on its passage they shall immediately become null and void.³

Restrictive legislation has not been the only means suggested by organized labor for solving the prison labor problem; to union men is due the credit for the first constructive scheme for the distribution of prison products.

Into the constitution of New York State in 1894, and largely through the efforts of labor men who con-

¹ Report of the Maryland Penitentiary Penal Commission, 1913, pp. 130-137.

² The bill abolishing the Contract System in New Jersey was signed in 1911 by Honorable Woodrow Wilson, at the time Governor of the State; also the National Democratic Platform, 1916, declared in favor of prison reform.

³ See contracts, Maryland House of Correction, cited "Penal Servitude", appendix 1, pp. 115-117.

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ceived the idea, was written a provision that no prison product should be sold on the open market, but setting aside for these products the market in the State's own institutions and departments and those of its political subdivisions, which were forbidden to buy on the open market commodities which the prisons could supply.¹

This system, known as the "State Use" System, has been slow to develop, largely due to the influence of those who had profited by the old-time Contract System and were determined to reinstate it.²

Another factor, as Thomas Mott Osborne has pointed out, is that "slave labor is inefficient labor",³ and the prisoners themselves, having no incentive to efficient work, have taken care that the State make as little as possible out of them.

With the introduction of self-government a new day dawned for prison industries. The prisoners now desire to "make good" when they leave the prison and realize the advantage to themselves in the ability to do a good day's work and earn a good day's pay. The increased output of the prison shops at Sing Sing since the introduction of self-government bears testimony to their new ambition.⁴

¹ C. Z. Lincoln, "Constitutional History of New York State", Vol. III, p. 287.

² Final Report of the Commissioners to examine the Department of State Prisons, New York, 1911.

³ Thomas Mott Osborne, "Prison Reform", an address delivered in Bridgeport, Conn., Feb. 28, 1915.

⁴ William H. Wadhams, "The New Prison System" (published by National Committee on Prisons and Prison Labor, Pamphlet 36).

Labor men noted this new activity in the prison industries, and Thomas Mott Osborne had not been many months warden of Sing Sing before a representative group of labor men, headed by Samuel Gompers, visited the institution and offered to help in the reorganization of the prison industries. The attack on Mr. Osborne delayed the work for a year, but at the annual meeting of the New York State Federation of Labor in October, 1916, definite action was taken when a committee was named "to devise a system of welfare craft instruction for state prison inmates learning trades."

John J. Manning, the moving spirit in this undertaking, prepared for the Federation a comprehensive scheme for the reorganization of the prison industries of the State, which the Federation Committee adopted and is presenting to the prison authorities and the people of the State. It seems fitting here to outline the plan which Mr. Manning proposed and which, by the action of its committee, the Federation indorsed as essential to the establishment of a satisfactory and efficient system of prison industries:

On commitment all prisoners should pass through a receiving station in order that their physical, mental, and industrial qualifications can be determined; as a result of this study they should be assigned to industrial work.

A survey of all the buildings connected with the penal institutions of the state should be made to determine their physical condition and for what industries they can best be used as now constructed, also whether changes are necessary in the construc-

tion of these buildings and whether new buildings should be erected.

A Board of Classification and Standardization should be established and empowered to standardize and classify the commodities consumed in the different state institutions for a period of not less than ten years. The prison industries could then be placed on a sound working basis, and the market for the prison products being assured, the prison authorities would be warranted in preparing a stock of goods for immediate delivery. This would prevent many of the manipulations of the law at present made by state departments in regard to the purchase of prison-made goods.

The prison industries should be as diversified as possible, in order that the training afforded a prisoner may tend to meet his individual needs. This will also tend to restrict the number of men in each industry so that on discharge a man can be assimilated readily in the trade in which he has become proficient while in prison.

Outdoor work should be provided on prison farms, in road-building and on public works. The road work should be coördinated with a comprehensive system for the building of roads throughout the state, and the farm work afford opportunity for agricultural training to men who will become farmers on release.

Skilled and practical teachers or instructors should be secured for every industry, farm project or road undertaking and these instructors should be disassociated with politics in every sense of the word. It should be the aim of the institutions to turn out not a vast number of products, but good marketable articles which state institutions will willingly purchase and which will compete on a fair basis with goods made by free labor.

A wage should be paid commensurate with the work done by the prisoner. This will insure two

decided advantages : a higher grade of workmanship, every industry having demonstrated that contented workmen do better work ; and the incentive which will stimulate the man who knows that those near and dear to him benefit by his labor.

Organized labor has answered the challenge that it seeks to prohibit labor in the prison. Labor men opposed the exploitation of the prisoner under the lease and contract system. Labor men devised the "state use" system which affords opportunity to the prisoner and fair play to him and to the free working man. To-day labor men present and stand firmly behind a broad constructive program for the development of prison industries on a right basis. And, furthermore, if the prisoner will seize his opportunity and develop himself to union standards on his release we will receive him into the Union and afford him the protection, the fellowship of the union group.¹

¹ Statement made by John J. Manning at Conference at Sing Sing Prison, July 29, 1915.

CHAPTER X

THE MAN WHO COMES OUT OF PRISON

BY R. J. CALDWELL

*Chairman, Committee on Employment, National Committee on Prisons and
Prison Labor*

CHAPTER X

THE MAN WHO COMES OUT OF PRISON

THOUSANDS of boys leave the reform schools and reformatories of this country every year. Thousands of them find their way back to the courts and on to the penitentiaries and State prisons. Thousands of the men in the State prisons, and who come out year by year, will tell you that they began their life of crime in a reform school or other juvenile institution. It is an endless chain.

In the city of Baltimore an illegitimate child is placed on the turning wheel and enters the foundling institution; at eight he is transferred to the industrial school, and at fourteen is graduated into the reformatory end of the industrial school. At eighteen he graduates, trained in a trade at which only women work, unable to get a job. He is picked up on the street and sent to the city jail for a term, and again works at the woman's trade. Upon graduation from this pest-hole, he is no better off than before. He is picked up again, goes to the workhouse to continue his education in the same woman's trade. Several years later he finds himself again released. He is skilled in a trade profitable to the penal institutions. The governor "for-

mally notifies the justices that they must send as many convicts as possible to the House of Correction because of the need of keeping good faith with the contractors at the institution.”¹ The Governor of one of our Western States found the contractors following up just such cases, framing them and returning them to the prison.² What chance has our “graduate” to get an honest job? Once in the State prison his skill is valuable; he works at the old trade, but when he graduates at the end of four, five, or ten years is it strange that he soon returns?

Some men have a chance when they get out of prison — a chance to commit again the crime for which they entered prison. They have protection in their life of crime. The only requisite is the guarantee of the old gang to the politicians that they will be on the level with their pals, and if the politicians will control the police and the court, they will control the elections by casting fraudulent votes, as my friend Jim did thirty times one election day, and in return was allowed to continue his old life unmolested. Every clever man coming from prison to a great city like New York has this opportunity. Is it to be wondered when he sees all around him political corruption, in prison and out, that he takes the chance and continues in the old life?

¹ See “Report on the House of Correction, Jessup, Maryland, Made by the National Committee on Prison Labor, November 1st, 1911”, to the Board of Managers, House of Correction. Published in “Penal Servitude”, Appendix 1.

² As stated in correspondence with the National Committee on Prison Labor, 1912.

Should he desire to go straight let us see what the struggle is. Pale and emaciated, garbed in an ill-fitting suit of prison make and of a material which every detective knows at sight, with carfare to the place of conviction and five or ten dollars to boot, this wreck of humanity faces the problem of readjusting his life to a community which he has left five, ten, or twenty years before, with former friends who shun him, with employment agencies which refuse to assist him, with police who dog his steps. He spends the night under the shelter of a sister's roof. Some crime takes place in the vicinity. The police arrest him, and he is taken to the lock-up. He avoids conviction and starts again. He secures a small job of a menial type and gets a little money ahead. He is visited by a member of the old gang. "Come back to the Gang" is the demand. He refuses. "Give up your money, or the boss will know you are a Con!" The problem is to decide between the old life of crime, the payment of blackmail, or the loss of the job. There is no protection except to the evildoer.

Yet society has thought that it did its duty towards the man who comes out of prison. Humane people possessed of human sympathy have established Prisoners' Aid Societies, have given old clothes and wood-yard jobs to the ex-convict and his family since the founding of the Pennsylvania Prison Society in 1787 to the present day. These efforts have been fruitless. The old prison system with its oppression, cells, clubs, guards, and chains, so brutalized the creatures that endured it that, in the majority

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of cases, they remained permanently in the criminal class, living half in prison and half out, half their time denouncing society, and half their time wreaking vengeance upon society.

Prisoners' Aid Societies have been profitable even to those whose salaries were not paid by Prisoners' Aid Societies. Hysterical furor, temporary "clean-ups", exposure of petty graft, the tickling of the sensibilities of lady bountiful and pardoning the noisy to the despair of the deserving prisoner for the special gratification of an administration or a statesman, mark an emotional wave and little, if any, real progress.

Can opportunity be given the ex-prisoner to make a place, an honest place for himself, in the world outside the prison? If so, what is the approach? How can he be so protected that society itself is protected?

The first approach lies in the prison; the initial work must be done there. The so-called Mutual Welfare System is a very simple expedient whereby the individuals we find in prison can express the best that there is in them, can improve their own conditions by consorting with others who are situated like themselves and can demonstrate to the unconvicted community that despite the accident of their incarceration they have the ability to overcome evil propensities with good, and to conduct themselves according to the dictates of society. Ball games, concerts, plays, the workshops, the schoolroom classes, sociability in the mess-hall, the prisoners' court, are simply the necessary ad-

juncts to a suppressed community which seeks self-expression, self-respect. ✓

Those who fail in this community life, and no one expects that number will be small, will need to be brought by their fellows to medical and psychiatric specialists. The prison community must see to it that those who cannot meet its standards are not permitted to rejoin the community outside the prison. The first step must be taken in the prison and only the man who has "made good" in the prison be permitted to leave the prison walls. ✓

The men emerging from prison, whose relations have been right with their fellows in the institution, possess a new idea, a new thought of opportunity, and they carry the germ of this to the larger community they enter; no longer do they carry forth the germs of crime, of vengeance, and skill in exploiting the community.

The new prison movement is reaching beyond the ex-prisoners to their fellows in the underworld, to the lowest strata of our social structure. Peter Cullen, a member of the Mutual Welfare League, escaped from Sing Sing Prison and for several weeks no clue could be had as to his whereabouts. Suddenly one day Peter notified Thomas Mott Osborne that he was voluntarily returning to the prison because his pals urged him not to betray the League. Peter's pals had felt the spirit of the new movement and responded to it in their own crude way. ✓

The change that is taking place in the roots of our civilization is hard to describe as we know so little of real underworld conditions, but in brief,

the tyranny of the police, the exploitation by fellow-criminals, the subtle influence of the politicians, are passing. The underworld is responding to the opportunity for freedom and protection in that freedom — “free to do right” is fast becoming a reality.

The movement must spread to the upper strata, the well-to-do must learn how to regard, how to meet the man who has been in prison. They must learn to eschew charity, to refuse to patronize, to demonstrate that democracy is a vital thing, the dominant factor in the life of the nation.

Protection to the man coming out of prison, protection to do right, is the great new thought. We have shown that, when released under the new system, the ex-prisoner will have a guarantee of physical health, normal mentality, and industrial ability sufficient for self-support. This guarantee makes possible the protection to the worker of the union organization in his particular line, and the group power of the honest working man can be substituted for the group influence of the crooked gang — even the unorganized trades have their social clubs or other agencies with which the ex-prisoner can be associated. His great need is to be connected up with these outside agencies.

To connect the ex-prisoner with these agencies for good, to open up for him a job which corresponds to the work he has successfully carried on in prison, is the task of those who would really help. This is equally true in regard to the graduate from a reform school, a reformatory, or a State prison; the emphasis is not on the place from which the

man has come but on that to which he is going. The person who would make this connection should be informed well in advance from the prison; when a man will be released, what his trade is and his ability in this trade, what social or religious activities he would seek, what weaknesses he needs to fear and wherein his ambition lies. The man who welcomes the ex-prisoner to the world outside, who introduces him to his new life, needs a sympathetic understanding of the very soul of the man, yet must have a practical working knowledge of the world into which the man is going and be big enough and broad enough to be the "pal", not patron. Then, and then only, can the day of release from prison be divorced from the old thought of despair and possess the hope which comes from the sense of safety and protection secured by a drawing together of the forces of community life which are uplifting society.

The ex-prisoner himself has no mean part to play in this work. He it is who can best welcome the newly released prisoner when he comes to the social center, the church, or the union. He it is who knows the heart-burning. He it is who knows the true friends who will help. It is the same ex-prisoner who can do most for the graduate of the juvenile institution or the wayward boy in the community. He is no mollycoddle, he has known life, he has been the outlaw, has lived through real temptation and understands the forces which appeal to the restless spirit of youth. His warning, his quiet suggestion, his reproof, have a subtle influence.

The test of any prison system is the man who is released from prison; his after life will demonstrate the practicability, the reality of any prison reform. From the ex-prisoner will come suggestions as to what he has found most difficult to withstand, as to where the new movement can be strengthened and made more effective. The "follow-up" work has a vital bearing on the whole prison problem, how great a bearing we can hardly realize; it is too early as yet for us to grasp its full significance.

But the work has been started. Some of us have joined together and through the medium of the Committee on Employment of the National Committee on Prisons and Prison Labor are endeavoring to harness together forces never before coördinated, to make social relationships real and protection adequate for the man who comes out of prison.

CHAPTER XI

THE COMMUNITY CENTER AND THE
DELINQUENT

BY JOHN COLLIER

*Director, The Training School for Community Workers, New York;
Secretary, National Community Center Association*

CHAPTER XI

THE COMMUNITY CENTER AND THE DELINQUENT¹

THE community center and the delinquent, not merely the problem of delinquency, need to be brought together. This is true whether the delinquent be the graduate of a penal institution or the wayward youth not yet committed. The need is mutual; there is no greater need on either side. To make this proposition convincing it is necessary to define the community center and also to venture on a speculation as to the nature of delinquency.

The community center is an impulse toward meeting, and a device for meeting, one of the crying needs of all industrial civilizations. This need is the restoration of the possibility for human expressiveness which in the first stages of industrialism is broken down; and the provision of new means for ethical development among the common people who in our day are subjected to kinds of ethical stress which in the past have been experienced by none except the more adventurous members of the small leisure class. These considerations can only

¹ This chapter is largely based on a report not yet published, prepared by Miss Mildred Taylor, Secretary, Committee on Unadjusted Children of the People's Institute and the National Committee on Prisons and Prison Labor.

be broadly stated here. The moral life of custom and of supernatural hope and fear, which has sustained and constrained the ninety and nine who did not stray in the past, is being rapidly made impotent under the reactions of science, of cosmopolitanism, of congestion, of factory production, of rapid transit, the diffusion of ideas and influences through printing, and the constant shifting of individuals from group to group of differing customs. So much for the ethical part. It all applies to the human part too. The specialization of industry has de-humanized work; the family as an institution has relatively lapsed. The organization of all social processes into vast units controlled from remote centers has deprived most individuals of the means for vital social expressiveness, wholesome self-assertion, and the sense of responsibility.

The old order changeth; the new order is a seething-pot — Macbeth's witch-pot rather than Zangwill's melting-pot. Custom and law diverge ever more widely; the actual group standards by which individuals really live grow more contrasting, while at the same time the individual moves (in America at least) freely from group to group. The whole order of things is more complex, more unstable, and the means for rightly "placing" the individual, whether socially or vocationally, are yet waiting to be forged out through social science.

The above condition, as a totality, is not bad but good. It is, however, the background against which the delinquent must be studied, and it is the condition directly and consciously responsible

for the world-wide movement to establish community centers.

Now for the community center. This is a name for any local organized center for ethical, human, or common interests. It is a watchword for those who are trying to win life back to the small unit basis in those fields of concern where the small unit is the right unit. If the theory back of Thomas Mott Osborne's work at Sing Sing is a correct one — the theory that men live normally in groups of a fairly intimate character, that the community is made up of coöperative groups, that men grow virtuous through taking their destiny into their own hands through responsible action in small groups — then the principles of Sing Sing must be established in the larger community, or else Sing Sing must continue as a refuge for the fortunate few. Sing Sing has become a fascinating laboratory for community work; its greatest interest lies in the fact that one may there observe in clear cut and favorable operation certain forces of human nature, certain hugely important principles of the enduring social organization which can also be observed in the community center movement in its many forms and under its many names; neighborhood association, social center, grange, Wirt School, and above all in the coöperative consumers' movement of European countries.

This last named movement is of the same type as the community center movement in nearly all essentials. In it, vast economic processes have been reorganized on the small-unit basis. Retail

societies, federations of retail societies, wholesale federations, propagandizing federations, an annual business of several billions of dollars, a membership of twenty-five million wage-earners, all, from bottom to top, rest on a basis of intimate units where every man knows his fellow man, where the local unit rises or falls by its own virtue and yet, in its hardships, is sustained by the resources of a great movement, and in its success contributes in ways vividly manifest to the success of the whole. The European movement has flooded over into social, moral, and spiritual life, in a hundred definable ways. In Belgium it constitutes the main part of the vital environment of a million members, and it remains in Belgium and eastern France the only important social structure, except possibly the Roman Catholic Church, which has not been shattered through the ravage and subjugation of the Great War.

In America, the community movement centers in its latest phase in the use of public school buildings by organized groups of the people. It is a new phase, yet sixty-eight cities were represented in the National Conference of Community Centers formed during the last year, and this number (of cities or towns, not of individual members) will grow to several hundred before another year has passed. In general, school community centers tend to become self-governing in a real way and are more or less — sometimes wholly — self-supporting. The promotion of self-governing and increasingly self-supporting community centers has become a policy

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with many State and municipal boards of education. These centers have memberships including all ages and both sexes, with emphasis on attendance by families as groups. The activities are whatever the people want, theoretically; and in large measure what the wise professional leader suggests and promotes, practically.

The community centers have not yet consciously related themselves to the problem of delinquency or of unadjustment; they tend to be and do in accordance with the tastes of the supposedly normal members of the immediate community — that is, the members neither too rich nor too poor, neither geniuses nor subnormals, neither passionate advocates of reform nor fugitive enemies of society. This is the infancy of the community center; it must and will face the real problem, pool the interest of its members toward great ends, and enlist the troublesome because yet untamed individual, if it is to have a future.

The reason why the community center must interest itself sympathetically in the delinquent individual contains within itself the theory as to the nature of delinquency intimated at the beginning of this chapter. The delinquent individual, when he is not an outright feeble-minded case, or mere accidental case, brought into the law's coils through fortuitous legal circumstances, or when his delinquency is not a direct result of the law's attempts to correct some previous minor delinquency, must be viewed as merely an acute manifestation of what is sub-acute through a large part of all our

population. He is the unadjusted individual. His overt act, and his criminal classification supposedly based on the act, signify little and sometimes less than nothing, for they are, in the case of most juvenile "offenders", neither the crime nor the cause of the crime.¹ Looking at the fountainhead of all delinquency, juvenile delinquency, we find the following list of approximate causes, assigned by the Committee on Unadjusted Children of the People's Institute and the National Committee on Prisons and Prison Labor. The list is patently true as far as it goes: physical defects; feeble-mindedness; border-line insanity; vocational unpreparedness; strong interests with no outlet; moral mal-education; unfortunate school environment; social isolation; social misplacement; gangs and other unfavorable relationships; family economic distress; conflict with family; irresponsible parents.

The Memorandum of the Committee above quoted continues: "The same causes produce truancy, delinquency and dependency, and the children classified under each of these headings experience, with varying degrees of emphasis, the same needs."

But it is evident that the above list of causes of delinquency, and any other list which would reasonably cover the facts of experience, is a list of causes which are afflicting or undoing multitudes of other children and multitudes of other families, of young people and old, who never become wards of the

¹"The City Where Crime is Play" (published by the People's Institute, 1914).

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State. These persons are never stigmatized as criminals, victims, or failures, or even classified as "unadjusted", but they are in fact unadjusted, unhappy, they represent vocational failures, they live within the neurotic zone, and in a sad and meaningful sense they are defeated lives. Quoting further from the Memorandum of the Committee on Unadjusted Children :

"The unadjusted child is the index of a far vaster latent misery among all the people. We class ourselves as normal and these problematical persons as abnormal; we dream that underneath our imagined good fortune we are not as they are; or that they are 'unfortunates', and we think that our own children are not bound to the same wheel. So we are willing to lavish public expenditures and technical resources on the unadjusted child, if only he can be kept away from our children and out of our immediate sight. And in our community and recreation centers, our playgrounds and settlements, we say: 'We are not reform institutions; we work for the average child.' It is a fact that most settlements and social centers to-day virtually debar the unadjusted child who has passed under the law, though few will explicitly say that they do. All the while the mass of those who are made at home in our neighborhood institutions, have the same needs as the unadjusted child and are, save for accident or circumstances, as unadjusted as he. The 'average' child, and family in fact, need the help of the special remedial agency, and the special agency to do its work effectively needs to operate within the community itself. For in the last analysis, unadjustment in the child, feeble-mindedness and other inherited pathology debarred, is just homelessness, nothing less and nothing more

— a lack of vital and satisfying relation to neighbors, to work, to the social life through which one's personality is discovered and maintained."

The point of view here suggested, as to the nature of delinquency, is especially important. If the community produces the delinquent, then we must attend to the community. If most men are basically sufferers just in the way the delinquent is before he is "caught", then we must attend to most men. Unadjustment is our gravest human problem, without exception. In it the special problem of the recognized delinquent must be absorbed, and our whole direction of treatment — the kind of demand which we make on our institutions — must be altered. The community center is potentially important in the facing of this issue because if it "gets ahead" at all, it must accomplish the following results:

1. It must make the people conscious of their problems and of ways of collectively meeting them. None of these problems is greater than that of unadjustment, and it calls for concerted action; the most utopian reconstruction of the individual will not solve it, unless we are to continue isolating the individual forever. The crisis will come when he "goes back home", and that "home", the neighborhood, and intimate group must be reconstructed from within under its own leadership. A community center could be viewed as such a "home" reconstructing itself.

2. The community center must bring the common people and the specialist together. Both elements

require it. Our civilization is specialized. Scientific endeavor involves specialization. The specialist must be conserved, including the specialist in curing unadjustment and improving institutions. The people must learn how to get at the specialist and use him, and this use must be reciprocal. It is in the fields of medicine and of the correction of unadjustments of the psychic and social kind that this mutual usefulness is most required. If we had community centers inspired by dynamic interests and had them functionally related with the specialists who work on delinquency, the dominant question of prevention and of after care would be met. They cannot be met otherwise.

3. A final and distinct aim of the community center must be to teach the people of a community to expect to find good in one another, to solicit talent, to devise uses for special talent and special experience. If our prisons have many feeble-minded inmates, they also have strong-minded inmates, and many inmates of the neurotic, the functionally disordered type, the type which is rich in special talent of many kinds, richer in temperamental endowment than perhaps any other type, and not without inventiveness. The community center needs these qualities. The child or man who has been in trouble and who possesses these qualities will make good if we can put them to the service of the community and win a place in the community by serving. We must hasten the time when prisoners, adult as well as juvenile, will be discreetly paroled to community center service.

To make this thought real an illustration is quoted from the Memorandum previously referred to :

“A family with eight boys. One boy has passed through a Protectory and is now being called upon periodically by a parole officer from the Protectory. He is out of work and the Employment Bureau of the Protectory's After-Care Department is trying to get him a position. A local employment bureau connected with a settlement is likewise trying to place the boy. The next younger brother, who is under the supervision of an attendance officer and has been threatened with the truant school, has also been before the Children's Court for delinquency and is on probation, reporting to a probation officer. A still younger brother is, according to the father, incorrigible. ‘He likes nothing but playing the violin,’ the father says.

“This remark leads back to the Protectory experience of the elder brother. There, according to the institution's record, the boy had learned to play the cornet ; he had played in the institution's orchestra.

“The father had once played an instrument. Music is the one common interest of the family. Their quarters are small, and as the babies had come along, one each year, the space for playing music had dwindled. At last they ceased to play together. The mother is ashamed of her eldest boy because he has been to a protectory, but she likes music too.

“There is a community center four doors from the tenement where this family lives. The distinguishing achievement of this center has been in the line of music. Orchestras and choral societies have been created there under the leadership of an amateur genius.

“The family has never heard of the community center. The community center has never heard

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of the family. The probation officer, the parole officer, the truant officer, have not consulted one another about this group of interrelated cases. None of them know the community center and it knows none of them.

"Here is a family with special talents which are at the same time their one common, passionate interest. These talents are needed and honored by the community. Here is a community instrument developed through years of labor with the object of enabling people to give of themselves to their neighbors. The family is 'down' in its own esteem and in that of its neighbors.

"To meet this case, there is no dearth of expert agencies, no dearth of community resources. There appears no intrinsic incapacity in the family. But each of these elements of social aid and of human hope and worth are moving, as it were, in a void. A solitude of the desert surrounds each one.

"Associate them," the Memorandum concludes, "and the whole situation will be transformed."

Space for further illustrative cases is lacking in this article; the above case alone opens many teasing vistas. But why, it will be asked, is this chapter devoted to "must be" and "can be" with no reference to actual past achievement? We must reply: The approach to the problem of delinquency, from the standpoint of sympathetic community aid, the approach of equal to equal, from without the prison and within, is new even in popular thought. As for the community center, it is as yet more a widespread and enduring impulse than anything achieved; three presidents of the United States have declared it to be the most significant current phase of funda-

mental democracy, but it is yet infantile, plastic, unsure of its own values. For this very reason, experiments, demonstrations, courageous applied imagination are needed. "Action is the beginning of everything." It is likely that the present year, in New York City at least, will witness radical developments in the bringing together of effort in community centers, effort toward the correction of unadjustment, and effort toward the modernization of prisons.

Postscript, April, 1917.

All that is said above has been embodied in a project just instituted by the Committee on Unadjusted Children of New York. The project is called the Community Clearing House. It serves an area of about fifteen thousand people in the Gramercy district of New York. Through this clearing house the experts of public and of private social service will be enabled to coöperate more intimately with one another and will be placed in touch with the organized common people. The clearing house is made semi-official through the coöperation of the following, among other public departments: Education, Charities, Correction, Health, Tenement, Employment, Hospitals.

Associated with the clearing house will be a social clinic for unadjusted children where experimental work in the rehabilitation of delinquent young people will be carried out in coöperation with the Children's Court, the Compulsory Attendance Bureau, and the parole officers of institutions.

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The Community Clearing House and the Social Clinic will operate in close relations with the large experimental Community Center which is maintained at School 40, Manhattan, by the Training School for Community Workers of the People's Institute.

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